

CA 659-06
VAR

Stone, Louis
06-3382

MSA. S. 1829-5673

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(continued)

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
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www.dnr.state.md.us/criticalarea/

April 27, 2010

Ms. Roxana Whitt
Calvert County Board of Appeals
150 Main Street
Prince Frederick, Maryland 20678

Re: Variance 08-3559 Stoney's Banquet Facility

Dear Ms. Whitt

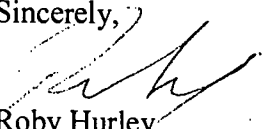
Thank you for providing information on the above referenced variance. The applicant is requesting an after-the-fact variance from the 50-foot setback in the Special Buffer Management Area (SBMA) requirement in order to permit a second and third riparian access, an onshore boat bar and part of a storage/cooler building. The property was recently remapped through the growth allocation process to Intense Development Area (IDA) and mapped as a Special Buffer Management Area.

In addressing the violation onsite, it is our understanding that \$10,000 in fee-in-lieu funds have been paid and a planting bond of \$23,230 has been received. The planting bond represents surety for planting in accordance with the January 2010 Lasting Impressions Buffer Area Planting Plan (LIBP), submitted with this application. Please note that the LIBP that was reviewed by Calvert County Planning and Zoning and Critical Area Staff contained and depicted both the 100-foot Buffer and 50-foot setback lines. The LIBP submitted with this application does not contain the required lines. The Board should view the correct plan with corrected Buffers in association with the variance request.

Provided that the Board of Zoning Appeals finds that the applicant meets all the variance standards, this office is not opposed to granting this variance.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. Please feel free to contact me at (410) 260-3468 if you have any questions.

Sincerely,


Roby Hurley
Natural Resource Planner
CA 659-06
Cc: Greg Bowen



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

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Martin O'Malley
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

March 24, 2010

VIA FAX & MAIL

Fax Number: 410-414-3092

Ms. Roxana Whitt
Calvert County Board of Appeals
150 Main Street
Prince Frederick MD 20678

Re: Calvert County Board of Appeals – Floodplain
Management Ordinance Variance Request, Stoney's
Banquet Facility – Case No. 08-3559(C)

Dear Ms. Whitt:

Thank you for the opportunity to comment on the above-referenced variance request submitted by Mr. Daniel J. Kelsh, P.E. of Collinson, Oliff & Associates, Inc. on behalf of his client, Louis P. Stone, III. Mr. Stone is the owner of Stoney's Banquet Facility located at 3946 Oyster House Road, Broomes Island MD, and is seeking an after-the-fact variance to the Calvert County Floodplain Management Ordinance (FPMO) to allow a banquet tent, cooler/storage building, onshore boat bar, well/pump house, and utilities servicing the buildings, below the Flood Protection Elevation (FPE).

The site is located entirely in the 100-year tidal floodplain of Island Creek in flood zone A7 with a Base Flood Elevation (BFE) of 6.0' NGVD as mapped on the effective Flood Insurance Rate Map (FIRM) Panel Number 2400110026B by the Federal Emergency Management Agency (FEMA). Calvert County adopted a one-foot freeboard in their FPMO, so the FPE for the site is 7.0' NGVD.

In order for a variance to be considered, the applicant must show good and sufficient cause; a determination that failure to grant a variance would result in exceptional hardship (other than economic) to the applicant; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local and State laws or ordinances.

After reviewing the information provided by the County, the State Coordinating Office of the National Flood Insurance Program (NFIP) offers the following comments for consideration by the Calvert County Board of Appeals:

- Calvert County is a participating community in the NFIP, and has agreed to adopt and enforce an ordinance for all development in the 100-year floodplain as mapped on the effective FIRM so that renters, homeowners and business owners in the County can purchase flood insurance from the NFIP.

- Development that is not compliant with the County's FPMO could affect the cost and/or availability of flood insurance for all policyholders in the County. If any deficiencies cannot be resolved, the County could be placed on probation from the NFIP by FEMA initially resulting in a \$50 surcharge on all flood insurance policies.
- The applicant has not demonstrated good and sufficient cause for a variance. If the applicant would have applied for a permit prior to construction, the requirements in the County FPMO could have been met.
- The applicant has not demonstrated that failure to grant a variance would result in exceptional hardship (other than economic). Although it may not be feasible to elevate the banquet tent, cooler/storage building, onshore boat bar and well/pump house, other alternatives exist.
- All structures shall be adequately anchored to prevent flotation, collapse or lateral movement during a flood.
- All electrical, heating, ventilation, plumbing, and air conditioning equipment shall be elevated to or above the FPE. If equipment must be installed below the FPE, the applicant must demonstrate to the County that no feasible alternative exists. In addition, if equipment is allowed below the FPE, it must be on a circuit that has a ground fault circuit interrupter (GFCI).
- All electric panel distribution boxes shall be at least 2 feet above the FPE.
- All oil and/or propane tanks servicing the buildings shall be adequately anchored to prevent flotation, and any vent pipes shall be extended to or above the FPE.
- Fully enclosed areas below the FPE shall be used solely for parking, access and limited storage, and be designed to automatically equalize water pressure on exterior walls. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or have a minimum of two openings having a total net area of not less than one square inch per square foot of enclosed area. The bottom of all openings shall be within one foot of finished grade.
- Construction materials used below the FPE shall be resistant to flood and water damage. FEMA Technical Bulletin 2: Flood Damage-Resistant Materials Requirements (August 2008).

The following comments are specific for each structure:

1. Banquet Tent – The metal structure supporting the tent was set in a concrete slab. Per Mr. Kelsh, it will be covered with a vinyl membrane material from approximately May 1st – October 31st each year, and the membrane will be removed during the off season and during the threat of a hurricane. Since the tent will be in place more than 180 days, it is not a "temporary structure" as defined by the County FPMO, so it could be treated as a permanent accessory structure. It is not clear if the metal structure was adequately anchored to the concrete, or if it could become dislodged from the concrete from floating debris during a flood. The sides of the tent will either be rolled up or tied back, so it may not meet the County FPMO definition for a "structure" which defines it as a walled and roofed building.



Although the tent may be exempt from the elevation requirement, it is still subject to other NFIP requirements, including 44 CFR 60.3 (a)(3):

"If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding."

In addition, the tent may be subject to additional provisions related to membranes as required in the local building code.

2. Cooler/storage building – The storage building is a new "U" shaped building that was built around an existing cooler. The storage building is approximately 1832 square feet, and the cooler is approximately 576 square feet. The storage building could be treated as an accessory structure provided that the enclosed area below the FPE is used solely for parking of vehicles, access and limited storage, constructed with flood-resistant materials, and is vented per the requirements of County FPMO. A Declaration of Land Restriction shall be recorded with the deed to document the special conditions associated with the building. It is not clear if the cooler has been adequately anchored.
3. Onshore boat bar – The bar shall meet the same NFIP requirements, 44 CFR 60.3 (a)(3), as cited above, and be adequately anchored to prevent flotation, collapse or lateral movement.
4. Well/pump house – The structure shall be adequately anchored to prevent flotation, collapse or lateral movement and equipped with water-equalizing vents that meets the County's FPMO.

Should the Board of Appeals decide to grant this request; a letter shall be sent to the applicant indicating the terms and conditions of the variance, the increased risk to life and property in granting the variance, and the increased premium rates for National Flood Insurance coverage. The applicant shall be notified in writing of the requirement for recordation of these conditions on the deed. The local permitting agency shall maintain a record of all variance actions and the justification for their issuance, as well as all correspondence. This record must be submitted as a part of the biennial report to FEMA and be available for periodic review.

Thank you again for the opportunity to provide comments. If you have any questions, please contact me at 410-537-3914.

Sincerely,

Kevin G. Wagner, CFM
Natural Resources Planner

cc: John Swartz, Calvert County Dept. of Planning & Zoning



Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
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November 28, 2006

Ms. Roxana Whitt
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Variance 06-3382 Stone

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance from the 100-foot Buffer requirements in order to permit the construction of 3,600 square foot banquet tent on slab as well as a 2,408 square foot storage building on slab. In addition, the applicant is requesting a special exception to permit the use of the property as a banquet facility. The property is designated a Limited Development Area (LDA) and is currently developed.

In regard to the special exception request, this office has no comments to offer. However, in regard to the requested variances, this office has several significant concerns resulting in opposition to the requests. First, while the applicant states that the overall impervious surface area of the site is decreasing from 31.4% to 28%, the permitted impervious surface area limit for the property is 15%. As such, it is necessary for the applicant to apply for an impervious surface area variance in addition to the Buffer variance. In addition, while we recognize that the County may consider the proposed washed stone area to be pervious in nature, it is our view that this material should be considered impervious as it further detracts from the Buffer's ability to provide habitat values and does not provide the water quality benefits and infiltration opportunities that natural vegetation provides. Based on this view, it appears that the site is significantly more impervious in nature than the 28% stated on the site plan, and in direct conflict with the goals for development within the LDA.

Second, it is our view while the site is almost entirely constrained by the Buffer, the variance process is not appropriate for accommodating the extent and nature of redevelopment on the property. Rather, the County should review the property comprehensively and recommend Buffer Exemption Area (BEA) status to the Planning Commission and County Commissioners if there is intent to permit the extent of redevelopment currently proposed. The BEA provisions were put in place to provide flexibility as well as opportunities for reasonable use and redevelopment of an existing grandfathered commercial property while providing for clear and comprehensive environmental benefits to the site, including minimum Buffer setbacks and minimum planting standards. Through the variance process, none of the desired beneficial environmental enhancements are being implemented. In addition, the standards for granting a variance appear difficult to meet.

Specifically, in evaluating the variance request, the Board must determine that the applicant has met each and every one of the variance standards, including that the variance will not adversely affect water quality and plant and wildlife habitat. Since it appears that virtually no area of Buffer will be left to serve for water quality and

Roxana Whitt
Variance 06-3382
November 28, 2006
Page 2

plant and wildlife benefits, it is our view that this standard has not been met. Further, it appears that the existing use on the property could continue without the award of a variance. Therefore, it does not appear possible to demonstrate that an unwarranted hardship would exist without the variance.

As a result of the information stated above and because we do not believe that each and every one of the County's variance standards has been met, or that the variance process is appropriate in this situation, this office remains strongly opposed to the granting of a variance. We recommend that the Board deny the variance and return the site plan to the Planning and Zoning office for consideration as a BEA.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner
CA 659-06



**CALVERT COUNTY
DEPARTMENT OF PLANNING & ZONING**

150 Main Street
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Director
Gregory A. Bowen

Board of Commissioners
Gerald W. Clark
Linda L. Kelley
Wilson H. Parran
Susan Shaw
Barbara A. Stinnett

December 22, 2008

Mr. Dan Kelsh
COA
P.O. Box 2209
Prince Frederick, MD 20678

Re: Stoney's Banquet Facility
SPR # 06-37
BOA # 08-3559

Dear Mr. Kelsh:

The following is a point-by-point response to your December 15, 2008 memo regarding the requirements for after-the-fact mitigation plan and bonding for the referenced site:

1. The Notice of Violation issued for the property was for construction without permits. Resolution of the notice required that an after-the-fact permit be applied for and issued for the completed construction. Per section 4-2 of the Calvert County Zoning Ordinance (CCZO), general requirements for development plan require commercial developments to go through the site plan review/approval process prior to the issuance of any permits. It is during the site plan review process that the Environmental Planners identify projects in the Critical Area and insure that the plan meets the Critical Area Law. The Notice of Violation did not specifically cite Critical Area requirements however since those requirements are to be addressed as part of the site plan and permit process all mitigation plan and bonding requirements are now being assessed. In addition, since the applicant is seeking an after-the-fact variance from the Board of Appeals, Critical Area law requires that a mitigation plan be approved and bonded prior to the variance being granted.
2. Per the Critical Area Commission's Local Government Assistance Guide for Lot Coverage, all existing structures, accessory structures and developed areas may remain in place, even if the lot coverage on the property exceeds the specified limits, however the amounts of impervious surface, partially pervious and developed pervious areas cannot be increased.
3. through 5.
Section 8-1.09.B of the CCZO requires that replanting to correct a violation shall be calculated at the rate of four square feet to one square foot (4:1) of the area

Mailing Address: 175 Main Street, Prince Frederick, Maryland 20678

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002/007

02/18/2009 WED 14:38 FAX 410 414 3092 PLANNING ZONING

plan shall be approved by the Department of Planning and Zoning and shall include canopy trees at a rate equal to one tree per 400 square feet and understory trees and/or shrubs at a rate equal to one per 200 square feet as described

Article 12 defines Grading as: "Any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled or any combination thereof. Therefore, all areas except the beach, revetment (permitted) and kitchen (partially on subject property and permitted) are considered to have been graded or filled without permits and therefore are in violation of Article 8 and must be mitigated. We usually do not prohibit planting in the buffer and, therefore, will allow the turf area also to be subtracted from the area of violation.

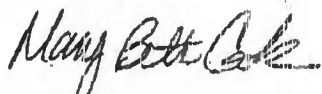
The arguments presented in items 3-5 do not nullify the requirements of Section 8-1.09.B. The fifteen percent impervious surface limit is still required for this LDA parcel (Section 8-1.04.G.1.f). The grandfathering provisions of Section 8-1.07 do not apply as the use has been changed from an oyster packing plant to a banquet facility (Section 8-1.07.A).

Also note that Section 8-1.04.G.4 indicates that a bond is necessary (Section 8-1.04.G.4.a) and that the bond will be held for one year from the planting season (March 15-May 15 and September 15-November 30) following or concurrent with the planting. The bond amount is equal to \$0.50 the square foot to be planted based on the Department of Planning and Zoning Customer assistance Guide on Fees.

Section 8-1.08.D.3 indicates that the 100 ft. Critical Area Buffer shall be maintained in native vegetation and shall be managed to achieve or enhance the functions stated in Section 8-1.08.D.1

Note that per Section 8-1.08.C.3.b of the CCZO, appeals and decisions made by the Department of Planning and Zoning with regard to Buffer Management Plans for site plans may be appealed to the Planning Commission. Please contact me if you have any additional questions.

Respectfully,



Mary Beth Cook
Zoning Officer

cc: Dave Brownlee
John Swartz
Code Enforcement



CALVERT COUNTY
DIVISIONS OF INSPECTIONS & PERMITS

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Division Chief
Joseph W. Hawxhurst, CBO

Board of Commissioners
Gerald W. Clark
Linda L. Kelley
Wilson H. Parran
Susan Shaw
Barbara A. Stinnett

Louis P. Stone III
P.O. Box 241
Dowell, MD 20629

Re: Revocation of Permit # 77517

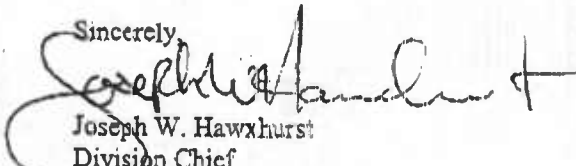
Dear Mr. Stone:

Please be advised that we find it necessary to revoke building permit #77517 issued on April 23, 2008 for the construction of a 26 slip marina at 3946 Oyster House Road, Broomes Island, Maryland. Per section 105.4.1 of the 2003 International Building Code, as amended and adopted by Calvert County, no building permit shall be issued under any circumstances or conditions that are in conflict with any provision or requirements of the Building Code ...the Zoning Ordinance...or any other regulations or ordinance duly adopted by the Board of County Commissioners or other applicable law. Any permit determined by the building official to have been issued in error shall be rescinded upon written notification to the permittee.

Per Section 4-2.01B.2.a of the Calvert County Zoning Ordinance, effective May 1, 2006, all commercial, industrial and institutional developments are subject to site plan review. In addition, per Section 9-6.03.A of the Zoning Ordinance, all commercial marine facilities shall have plans and details of the proposed construction certified by a licensed engineer. Because neither of the above requirements was met, your permit application to construct a marina should not have been approved and a permit should not have been issued.

As a result of this error we are hereby revoking permit # 77517 and you are not permitted to begin construction of the 26 slip marina. You must submit a plan prepared by a licensed engineer and obtain site plan approval as required by the Zoning Ordinance prior to re-submitting for a building permit for this project.

Sincerely,



Joseph W. Hawxhurst
Division Chief
Calvert County Inspections and Permits

cc: Mary Beth Cook, Deputy Director, Planning and Zoning
John Swartz, Environmental Planner
Jamie Ward, Wards Construction

SITE PLAN REVIEW

DEPARTMENT OF PLANNING AND ZONING

DATE: September 11, 2008

MEMO TO: Bobbi Hutchinson
Planner

MEMO FROM: John Swartz
Planner I

RE: SPR 06-37
Stoney's Banquet Facility

Comments of Planning and Zoning Environmental Review:

1. The entire project is mapped as A7 (Elevation 6) and must conform to FEMA regulations as detailed in the Calvert County Floodplain Management Ordinance. New construction, including the proposed kitchen, must be raised to a minimum of 7'. The construction may constitute a substantial improvement and would require the elevation of the existing structures, i.e. the existing cooler. Please provide the documentation showing the value of the existing cooler and the value of the improved cooler/ storage building.
2. All appropriate paper work must be provided for the banquet facility, storage building, the well house, and the boat bar/exhibit including Agreements to provide Elevation Certificates, Elevation Certificates prior to framing and final as-built Elevation Certificates, Non-conversion Agreements, Memos of Land Restriction, and Venting Affidavits.
3. The site exceeds the 15% impervious threshold and shall come into compliance or obtain a variance. Alternatively, the applicant could apply for Critical Area Growth Allocation to change its Critical Area overlay from LDA to IDA. There is no impervious surface limit in IDA but, if Growth Allocation was to be approved, other IDA requirements (Section 8-1.03) must be met.
4. Provide building permits for all structures. The Board of Appeals Order granted a Special Exceptions for the banquet facility. All Structures in the buffer require a variance or special exception including the boat bar, the storage building and the ponds. The applicant may apply for special buffer management area (SBMA) status due to the lack of an existing forested buffer. If granted SBMA status, work could be permitted in the buffer beyond 50 ft from the shoreline without a variance as long as the proposed work is consistent with Section 8-1.08.D.4 and appropriate permits are obtained. Any non-water-dependent structures that are within 50' of the shoreline would still require a variance. *+ boardwalk*
5. Marine Commercial Zoning is intended to provide businesses which supply and cater to marine activities and needs.
6. This site must comply with all Critical Area Regulations and the Calvert County Floodplain Management Ordinance. This site is not in compliance with these ordinances.
7. Although the report to the Board of Appeals from Roxanna Whitt states that the 15% replanting requirement is not achievable, she recommends that the pervious areas be planted with salt tolerant species. However, the Board of Appeals order does not specifically grant a Special Exception to the 15% planting requirement, therefore the

requirement remains and may only be satisfied by planting native species.

8. Please apply for all required permits including building, grading, plumbing and electrical permits as required by Condition 1 of the Special Exception granted by the Board of Appeals.
9. Due to the amount of disturbance in the 100' buffer (habitat protection area), this site plan must be sent to the Chesapeake Bay Critical Area Commission for their comments. Please inform the Commission that the buildings have already been constructed and that the County has initiated enforcement action on the site .

Judge John C. North, II
Chairman



Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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(410) 260-3460 Fax: (410) 974-5338

MEMORANDUM

To: David F. Hale, President, Calvert County Board of Commissioners
Frank Jaklitsch and David Brownlee, Calvert County Department of Planning and Zoning

From: Julie V. LaBranche, Critical Area Commission

Date: February 25, 2003

Re: Critical Area Program amendments

Attached is a revised copy of our February 11, 2003 letter to the Board of Commissioners, summarizing the Critical Area program amendments approved by the Commission on February 5, 2003. The parcel numbers excluded from Buffer Exemption status were listed incorrectly (refer to CAMA 02-1 on page 3 of our letter). The revised list of parcels excluded from Buffer Exemption status include: the undeveloped portion of Parcel 196, and Parcels 357, 35 and 34.

I apologize for any inconvenience this error may have caused. Please contact me if you have any questions regarding these changes.

Sincerely,

Julie V. LaBranche
Natural Resources Planner

2/28/03

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To	David Brownlee	From	Julie LaBranche
Co.	Calvert County	Co.	CAC
Dept.	Planning & Zoning	Phone #	410-260-3475
Fax #	410-414-3092	Fax #	

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Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

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(410) 260-3460 Fax: (410) 974-5338

February 11, 2003

David F. Hale
Calvert County Board of County Commissioners
175 Main Street
Prince Frederick, Maryland 20678

Re: Calvert County Critical Area Program, Comprehensive Review, Part I

Dear Mr. Hale:

The purpose of this letter is to officially notify you of the Critical Area Commission's action regarding the proposed amendments to the Calvert County Critical Area Program. On February 5, 2003, the Commission concurred with the Chairman's determination that the amendments proposed by the County be approved as a refinement to the County's program with the following conditions and revisions:

The Commission approved the following text and map amendments, as proposed by the County.

CATA 02-3 Clearing in Limited Development Areas
(Calvert County Zoning Ordinance, Article 4, Section 4-8.07.A.3)

CATA 02-4 Fees-in-lieu in the Conservation Manual
(Calvert County Critical Area Program, Part III, Conservation Manual, Chapter III, Section C.4)

CATA 02-5 Definitions of streams in the Critical Area
(Calvert County Zoning Ordinance, Article 8)

CATA 02-7 Clearing for water access and shore erosion control projects
(Calvert County Zoning Ordinance, Article 4, Section 4-8.07.A.3.e.ii)

CATA 02-9 Definition of clearing in the Critical Area
(Calvert County Zoning Ordinance, Article 8)

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CATA 02-11 Clearing and removal of vegetation in the Critical Area Buffer
(Calvert County Critical Area Program, Conservation Manual, Part III, Chapter V, Section A.2.a. and Calvert County Zoning Ordinance, Article 8, Section 4-4.07.D.4)

CATA 02-12 Forest and developed woodland cover
(Calvert County Zoning Ordinance, Article 4, Section 4-8.07.A.5.e)

CAMA 02-2 New Buffer Exemption Area Bill's Marina (Tax Map 38, Parcel 17)

The Commission approved the following text and map amendments with conditions or revisions.

CATA 02-2 Solomons Zoning Ordinance for waterfront setbacks
(Solomons Master Plan and Zoning Ordinance, Chapter VIII, Section A(1))

For the purpose of consistency with the provisions of COMAR 27.01.09, the Commission approved the first paragraph of Section A.1 with the revisions as noted below regarding delineation of the waterfront Buffers.

~~**"THE 100-FOOT CRITICAL AREA BUFFER, AND THE SOLOMONS**~~

"WATERFRONT BUFFERS ARE MEASURED FROM THE MEAN HIGH WATER LINE OF TIDAL WATERS, THE LANDWARD EDGE OF TIDAL WETLANDS, AND FROM TRIBUTARY STREAMS IN THE CRITICAL AREA."

The Commission approved the following additional revisions to paragraph A.1., clarifying the applicability of the 30-foot Solomons waterfront setback in Buffer Exemption Areas, as amended below (refer to text shown in bold and italicized capitals).

A. WATERFRONT SETBACKS BUFFERS

1. Primarily Developed Areas

These include sub-areas B1, B2, B3, C1, C4, C6, C7, D1, D2, D3, E1 and E2. Many structures in these areas are located very near the water and most of the area is bulkheaded. ~~In most cases, a 30' setback will allow structures close enough to afford a view around existing buildings, yet far enough back to afford a small buffer to the water.~~ **SOME OF THESE AREAS AND SUB-AREAS MAY BE MAPPED AND DESIGNATED AS "BUFFER EXEMPTION AREAS" IN THE APPROVED CALVERT COUNTY CRITICAL AREA PROGRAM. IN THE PORTIONS OF THE AREA OR SUB-AREAS THAT ARE DESIGNATED AS BUFFER EXEMPTION AREAS IN THE APPROVED CALVERT COUNTY CRITICAL AREA PROGRAM, A 30-FOOT BUFFER IS REQUIRED, AND ALL CRITERIA AND**

CONDITIONS LISTED IN SECTION 4-4.07.E OF THE CALVERT COUNTY ZONING ORDINANCE SHALL APPLY UNLESS OTHERWISE INDICATED IN SUBSECTIONS A-D, OF THIS SECTION. *IN THE PORTIONS OF THESE SUB-AREAS THAT ARE NOT LOCATED IN BUFFER EXEMPTION AREAS, ALL CRITERIA AND CONDITIONS LISTED IN SECTION 4-4.07 OF THE ZONING ORDINANCE APPLY, INCLUDING THE 100-FOOT BUFFER.* ~~IN PORTIONS OF THE SUB-AREAS THAT ARE LOCATED IN THE BUFFER EXEMPT AREAS, a 30' setback is required in these areas, with the following conditions:~~

- (a) No parking is allowed within the 30' setback.
- (b) All materials, such as decks or walkways, must have a pervious surface.
- (c) N decks may be higher than 5' above ground level.
- (d) Only water dependent facilities are allowed within ~~this area~~ the 30' setback (as defined in COMAR 14.15.03 27.01.03).
- ~~(e) ALL CRITERIA AND CONDITIONS LISTED IN SECTION 4-4.07.E OF THE CALVERT COUNTY ZONING ORDINANCE SHALL APPLY UNLESS OTHERWISE INDICATED IN SUBSECTIONS A-D, OF THIS SECTION.~~

CATA 02-8 Permitted development within the Critical Area Buffer

(Calvert County Zoning Ordinance, Article 4, Section 4-4.07.D)

The Commission approved text revisions shown in bold capitals.

"ON GRANDFATHERED LOTS IN THE CRITICAL AREA, BUILDING ADDITIONS TO THE PRINCIPAL STRUCTURE OF LESS THAN 50 SQUARE FEET ARE PERMITTED IN THE CRITICAL AREA BUFFER PROVIDED NO TREES ARE REMOVED DURING CONTRUCTION AND THE ADDITION IS GREATER THAN 50 FEET FROM MEAN HIGH WATER, THE EDGE OF TIDAL WETLANDS, OR A TRIBUTARY STREAM."

CATA 02-13 Revised list of Buffer Exemption Areas

(Calvert County Zoning Ordinance, Article 4, Section 4-8.07.E.3)

The Commission approved revisions to the list of Buffer Exemption Areas proposed by the County, as stated in amendment CAMA 02-1 below. As referenced, Map 3A should be revised, excluding the following: Parcel 51, the undeveloped portion of Parcel 196 (refer to attached map), Parcel 357, Parcel 35, and Parcel 36.

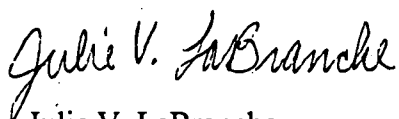
CAMA 02-1 New Buffer Exemption Areas in the Solomons Town Center

The Commission approved the new Buffer Exemption Areas proposed by the County with the exception of the following parcels in the Solomons Town Center area: Parcel 51, the undeveloped portion of Parcel 196, Parcel 357, Parcel 35, and Parcel 34 (refer to attached map).

David F. Hale
Calvert County Comprehensive Review, Part I
Page 4

Thank you for your participation in Part I of the Comprehensive Review for the Calvert County Critical Area Program. Please contact our office at (410) 260-3460 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in cursive script that reads "Julie V. LaBranche".

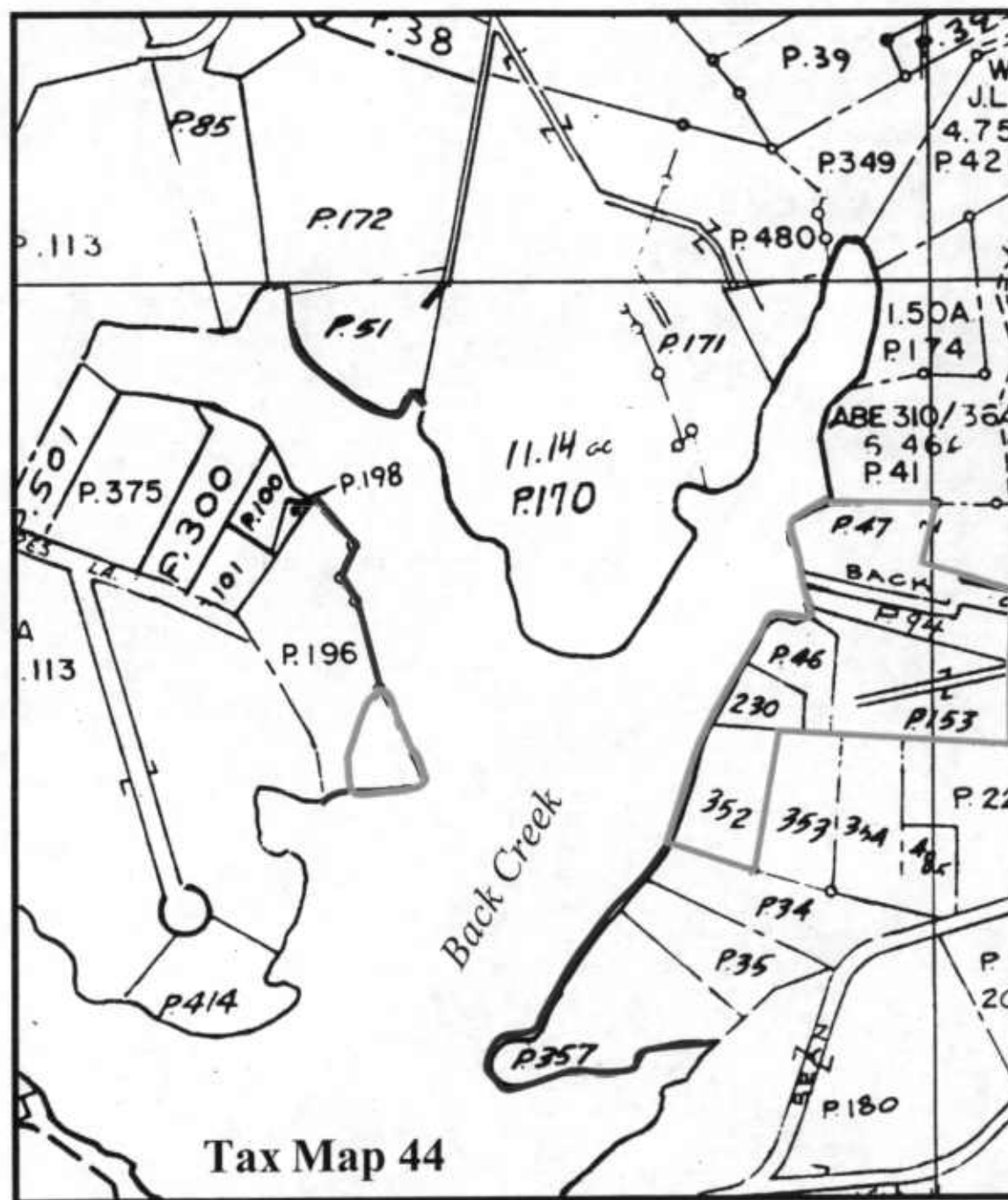
Julie V. LaBranche
Natural Resources Planner

cc: Frank Jaklitsch (Calvert County, Department of Planning and Zoning)
Ren Serey (Critical Area Commission)
Mary Owens (Critical Area Commission)

CAMA 02-1 Proposed Buffer Exemption Areas, Solomons Town Center Area on Back Creek

**Parcels
47, 94, 153, 46, 230, 352
and developed portion
of Parcel 196**

- Proposed by Calvert County
- Revised by Commission staff
following site visit



Case No. 06-3382

Public Hearing
December 7, 2006

Louis P. Stone, III has applied for a variance in the 100' waterfront buffer requirements and for a Special Exception to create a banquet hall. The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel 15) and is zoned MC Marine Commercial.

AUTHORITY OF THE BOARD OF APPEALS

Section 11-1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of this Ordinance.

Section 11-1.02 of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to hear and decide petitions for special exceptions. A special exception is defined as, "A grant of a specific use that would not be appropriate generally or without restriction. Approval of a special exception is based upon a finding that certain conditions as detailed in the Zoning Ordinance are met, that the use conforms to the Comprehensive Plan and is compatible with the existing neighborhood."

TESTIMONY & EVIDENCE PRESENTED

1. The case was presented December 7, 2006 before Board of Appeals members Mr. Michael Reber, Chairman; Ms. Karen Edgecombe, Alternate for Mr. Walter Boynton, Vice Chairman; and Mr. Dan Baker (the Board). Mr. Louis P. Stone, III was present at the hearing and was represented by Mr. Dan Kelsh from Collinson, Oliff and Associates, Inc.
2. A Staff Report, along with photographs taken on site, was entered into the record as Staff Exhibit No. 1.
3. The following Applicant Exhibits were dated and entered into the record at the hearing:
 - Exhibit No. 1 – Application
 - Exhibit No. 2 - Plat Submitted With Application
 - Exhibit No. 3 – Table 4.1 Detailed Definitions of Impervious Cover, 4-3, 1 page
 - Exhibit No. 4 – Memo dated October 25, 2006 from John Swartz

CRITICAL AREA COMMISSION
Chesapeake and Atlantic Coastal Zone

JAN - 9 2007

4. The following correspondence was entered into the record at the hearing:

- Letter dated November 28, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
- Memo dated November 8, 2006 from Ron Babcock, Soil Conservation Services
- Memo dated November 27, 2006 from Mary Beth Cook, Engineering Bureau

FINDINGS OF FACT

Based on the application, testimony and evidence presented at the hearing, the Board found the following facts to be true:

1. The property consists of 1.31 acres and is situated on a small peninsula on the west bank of Island Creek, near its confluence with the Patuxent River.
2. The property immediately to the north is Stoney's Restaurant. The properties to the west are concrete parking and driveway areas that are also part of the Stoney's Restaurant development. Residential houses are located behind the concrete parking area.
3. The site was the former home of the Denton Oyster Company, which operated on the premises for more than 50 years. The old oyster house has been removed, as it was damaged in Hurricane Isabel. The oyster house and sheds were located immediately adjacent to the waterfront.
4. The grounds consist of hard-packed, crushed oyster shell which has recently been covered with washed stone. The shoreline is protected by a bulkhead. There is a cooler on the property, as well as a fuel tank and gas pump. A boat exhibit is in process. A portion of the proposed kitchen area for the adjacent Stoney's Restaurant (currently being used for storage) is located on the property.
5. No vegetation currently exists on the site and the site is not currently functioning as a buffer area.
6. The applicant proposes to enclose the existing cooler with a storage building, and to add a banquet tent on a slab. The tent is to be used for weddings and other special events and would accommodate approximately 120 people at a time.
7. Thirty additional parking spaces would be provided on site. The existing one way road and the existing and proposed parking are sufficient to address questions of congestion.

8. The buffer encompasses almost the entire property and no structures could be located outside the buffer without a variance.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 11-1.01.B and Section 11-1.02 of the Calvert County Zoning Ordinance):

1. The Board concludes that it has the authority to grant the subject variance from the Critical Area requirements of Section 8-1 of this Ordinance.
2. The Board concludes that the applicant has overcome the presumption of nonconformance as required in Section 11-1.01.B.2 &3 of the Zoning Ordinance.
3. The Board concludes that the applicant has met each of the following variance standards:
 - a. The variance will not result in injury to the public interest; and
 - b. granting the variance will not adversely affect the implementation of the Comprehensive Plan; and
 - c. the variance is the minimum adjustment necessary to afford relief from the regulations; and
 - d. special conditions or circumstances exist that are peculiar to the land or structure within Calvert County and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship; and
 - e. a literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County; and
 - f. the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area; and
 - g. the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property.

- h. the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law.
4. The Board concludes that the proposed special exception does not adversely affect the implementation of the Comprehensive Plan for the physical development of the County.
5. The Board concludes that the proposed special exception will not be detrimental to the permissible use and enjoyment of adjacent properties, or to the health, safety, or general welfare of the County.
6. The Board concludes that the proposed special exception will not create congestion on roads or streets, create fire hazards, tend to overcrowd land or unduly concentrate population, interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public services, or adversely interfere with the surrounding environment.
7. The Board concludes that the applicant can meet the conditions required by the Board and those specified in the Ordinance.

ORDER

It is hereby ordered, by a unanimous decision that a variance in the 100' waterfront buffer requirements and the Special Exception to create a banquet hall as requested by Louis P. Stone, III be **GRANTED** based on the above findings of fact and conclusions subject to the following conditions:

1. All permits and approvals required by the Calvert County Zoning Ordinance and the Department of Planning and Zoning and those required by any other departments, agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained before commencing the development activity approved by this Order.
2. All requirements from the Engineering Department regarding stormwater management and all requirements of the Floodplain Ordinance must be met.

In accordance with Section 11-1.01.F.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of this Ordinance and subject to the enforcement provisions of Section 1-7.

In accordance with Section 11-1.01G of the Calvert County Zoning Ordinance if any application for a variance is denied by a final order of the Board, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order. If any such denial by the Board is appealed to a higher Court and the Board's denial is upheld, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order of the Court.

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

JAN
Entered: December 8 *2007*
Pamela P. Helie, Clerk *2006 ph*

Michael J. Reber

Michael J. Reber, Chairman

**CALVERT COUNTY BOARD OF APPEALS
CORRECTED ORDER**

Case No. 06-3382

Public Hearing: December 7, 2006

**THE PURPOSE OF THIS CORRECTED ORDER IS TO CORRECT CLERICAL
ERRORS OF OMISSION IN THE ORIGINAL ORDER,
WHICH IS HEREBY NULLIFIED**

Louis P. Stone, III has applied for a variance in the 100' waterfront buffer requirements for an existing building, which is proposed to be changed to a kitchen; for a proposed storage building; and for a banquet facility (tent); and for a Special Exception to create a banquet hall. The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel 15) and is zoned MC Marine Commercial.

AUTHORITY OF THE BOARD OF APPEALS

Section 11-1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of this Ordinance.

Section 11-1.02 of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to hear and decide petitions for special exceptions. A special exception is defined as, "A grant of a specific use that would not be appropriate generally or without restriction. Approval of a special exception is based upon a finding that certain conditions as detailed in the Zoning Ordinance are met, that the use conforms to the Comprehensive Plan and is compatible with the existing neighborhood."

TESTIMONY & EVIDENCE PRESENTED

1. The case was presented December 7, 2006 before Board of Appeals members Mr. Michael Reber, Chairman; Ms. Karen Edgecombe, Alternate for Mr. Walter Boynton, Vice Chairman; and Mr. Dan Baker (the Board). Mr. Louis

P. Stone, III was present at the hearing and was represented by Mr. Dan Kelsh from Collinson, Oliff and Associates, Inc.

2. A Staff Report, along with photographs taken on site, was entered into the record as Staff Exhibit No. 1.
3. The following Applicant Exhibits were dated and entered into the record at the hearing:
 - Exhibit No. 1 – Application
 - Exhibit No. 2 - Plat Submitted With Application
 - Exhibit No. 3 – Table 4.1 Detailed Definitions of Impervious Cover, 4-3, 1 page
 - Exhibit No. 4 – Memo dated October 25, 2006 from John Swartz
4. The following correspondence was entered into the record at the hearing:
 - Letter dated November 28, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
 - Memo dated November 8, 2006 from Ron Babcock, Soil Conservation Services
 - Memo dated November 27, 2006 from Mary Beth Cook, Engineering Bureau

FINDINGS OF FACT

Based on the application, testimony and evidence presented at the hearing, the Board found the following facts to be true:

1. The property consists of 1.31 acres and is situated on a small peninsula on the west bank of Island Creek, near its confluence with the Patuxent River.
2. The property immediately to the north is Stoney's Restaurant. The properties to the west are concrete parking and driveway areas that are also part of the Stoney's Restaurant development. Residential houses are located behind the concrete parking area.
3. The site was the former home of the Denton Oyster Company, which operated on the premises for more than 50 years. The old oyster house has been removed, as it was damaged in Hurricane Isabel. The oyster house and sheds were located immediately adjacent to the waterfront.
4. The grounds consist of hard-packed, crushed oyster shell which has recently been covered with washed stone. The shoreline is protected by a bulkhead. There is a

cooler on the property, as well as a fuel tank and gas pump. A boat exhibit is in process. A portion of the proposed kitchen area for the adjacent Stoney's Restaurant (currently being used for storage) is located on the property.

5. No vegetation currently exists on the site and the site is not currently functioning as a buffer area.
6. The applicant proposes to enclose the existing cooler with a storage building, and to add a banquet tent on a slab. The tent is to be used for weddings and other special events and would accommodate approximately 120 people at a time.
7. Thirty additional parking spaces would be provided on site. The existing one way road and the existing and proposed parking are sufficient to address questions of congestion.
8. The buffer encompasses almost the entire property and no structures could be located outside the buffer without a variance.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 11-1.01.B and Section 11-1.02 of the Calvert County Zoning Ordinance):

1. The Board concludes that it has the authority to grant the subject variance from the Critical Area requirements of Section 8-1 of this Ordinance.
2. The Board concludes that the applicant has overcome the presumption of nonconformance as required in Section 11-1.01.B.2 &3 of the Zoning Ordinance.
3. The Board concludes that the applicant has met each of the following variance standards:
 - a. The variance will not result in injury to the public interest; and
 - b. granting the variance will not adversely affect the implementation of the Comprehensive Plan; and
 - c. the variance is the minimum adjustment necessary to afford relief from the regulations; and
 - d. special conditions or circumstances exist that are peculiar to the land or structure within Calvert County and that a literal enforcement of provisions within the County's Critical Area Program would result in

unwarranted hardship; and

- e. a literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County; and
- f. the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area; and
- g. the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property.
- h. the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law.

- 4. The Board concludes that the proposed special exception does not adversely affect the implementation of the Comprehensive Plan for the physical development of the County.
- 5. The Board concludes that the proposed special exception will not be detrimental to the permissible use and enjoyment of adjacent properties, or to the health, safety, or general welfare of the County.
- 6. The Board concludes that the proposed special exception will not create congestion on roads or streets, create fire hazards, tend to overcrowd land or unduly concentrate population, interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public services, or adversely interfere with the surrounding environment.
- 7. The Board concludes that the applicant can meet the conditions required by the Board and those specified in the Ordinance.

ORDER

It is hereby ordered, by a unanimous decision that a variance in the 100' waterfront buffer requirement for an existing building, which is proposed to be changed to a kitchen; for a proposed storage building; and for a banquet facility (tent); and a Special Exception to

create a banquet hall as requested by Louis P. Stone, III be **GRANTED** based on the above findings of fact and conclusions subject to the following conditions:

1. All permits and approvals required by the Calvert County Zoning Ordinance and the Department of Planning and Zoning and those required by any other departments, agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained before commencing the development activity approved by this Order.
2. All requirements from the Engineering Department regarding stormwater management and all requirements of the Floodplain Ordinance must be met.

In accordance with Section 11-1.01.F.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of this Ordinance and subject to the enforcement provisions of Section 1-7.

In accordance with Section 11-1.01G of the Calvert County Zoning Ordinance if any application for a variance is denied by a final order of the Board, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order. If any such denial by the Board is appealed to a higher Court and the Board's denial is upheld, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order of the Court.

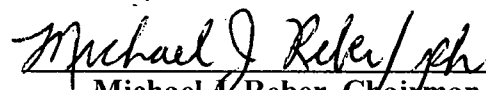
In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person

Violation
of
Variance

aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered: October 15 2008
Pamela P. Helie, Clerk


Michael J. Reber, Chairman

RECEIVED

MAY 18 2010

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays**CALVERT COUNTY BOARD OF APPEALS
ORDER****Case No. 08-3559(D)
Public Hearing: May 6, 2010**

Louis P. Stone, III has applied (after-the-fact) for variances in the 50-foot Critical Area waterfront buffer requirement for approval of development/structures within the buffer as shown on the variance site plan, including an onshore boat bar with canopy, banquet tent on slab, storage building, landscaping & grading, well/pump house, parking lot, boardwalk, concrete and brick pavers, walkways, concrete slabs, gravel & stone surfaces, and three (3) pedestrian access points 8-feet wide each. The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel 15) and is zoned MC/IDA Marine Commercial/Intensely Developed Area.

The case was presented May 6, 2010 before Board of Appeals members Mr. Patrick Nutter, Acting Chairman; Mrs. Susan Hance-Wells, Member; and Mr. John Ward Member, (the Board). Carlton Green, Esquire, served as the Board's Counsel. Mrs. Eugenia Cousineau Stone was present and testified at the hearing and was represented by Mr. Dan Kelsh from Collinson, Oliff & Associates, Inc., Barbara Palmer, Esquire and Sager Williams, Esquire.

AUTHORITY OF THE BOARD OF APPEALS

The jurisdiction of the Board of Appeals is based on Article 66B of the Annotated Code of Maryland, as amended. Article 11 Section 1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of the Ordinance.

TESTIMONY & EVIDENCE PRESENTED

I. The following Applicant's Exhibits were entered into the record at the May 6, 2010 hearing:

- Exhibit No. 1 – Application
- Exhibit No. 2 – Plat Submitted With Application

- Exhibit No. 3 – Approved Mitigation & Planting Plan
 - Exhibit No. 4 – Plat With Health Department Approval
 - Exhibit No. 5 – Affidavit of Sign Posting
 - Exhibit No. 6 – Stipulation for Variance Case No. 08-3559(D)
 - Exhibit No. 7 - Site & Layout Plan Plat w/colors, Stoney's Banquet Facility
 - Exhibit No. 8 – Special Exception & Variance Plan, Denton's Oyster House, Dated 12/7/06 from BOA Case No. 06-3382
 - Exhibit No. 9 – Memorandum in Support of Variance
 - Exhibit No. 10 – Board of Appeals Corrected Order No. 06-3382
 - Exhibit No. 11 – Board of Appeals Order No. 08-3559(B)
 - Exhibit No. 12 – Transcript for Board of Appeals Case No. 08-3559(B), dated January 8, 2009
 - Exhibit No. 13 – Board of Appeals Order No. 08-3559(C)
 - Exhibit No. 14 – Calvert County Staff Report, Findings of Fact, CAMA 09-11; Proposed Special Buffer Management Area Status for Stoney's Banquet Facility in Broomes Island, dated January 6, 2010
 - Exhibit No. 15 – Staff Report, Stoney's Banquet Facility Growth Allocation Findings, Applicant Calvert County; Proposal: CAMA 09-10, dated January 29, 2010
 - Exhibit No. 16 – Report to the Board of Appeals from Roxana Whitt, dated March 23, 2010 for April 2, 1010 hearing, RE: Case 08-3559(C)
 - Exhibit No. 17 – Letter dated April 20, 2010 from Margaret McHale, Chair, Critical Area Commission, to Honorable Wilson Parran, President, RE: Six-Year Comprehensive Review Approval
2. The following Staff Exhibit was entered into the record at the May 6, 2010 hearing:
- Exhibit No. 1 – Staff Report dated April 19, 2010, prepared by Roxana Whitt, Board of Appeals Administrator, for Board of Appeals hearing May 6, 2010 for Case No. 08-3559(D)
3. The following Calvert County Department of Planning & Zoning representative was present and testified at the May 6, 2010 hearing:
- Mary Beth Cook, Calvert County Zoning Officer, 150 Main Street, Prince Frederick, MD 20678
4. The following correspondence was entered into the record at the May 6, 2010 hearing:

- Board of Appeals Review Comments from John Knopp, Project Engineer, Department of Public Works, Engineering, dated April 20, 2010 for May 6, 2010 BOA hearing RE: Case No. 08-3559(D)
- Memo dated April 8, 2010 from John Swartz, Planner, Department of Planning and Zoning, to Pam Helie, Board of Appeals Staff, Re Case No. 08-3559(D) Stoney's
- Letter dated April 27, 2010 from Roby Hurley, Natural Resource Planner, Critical Area Commission, RE: Variance 08-3559 Stoney's Banquet Facility

5. The following additional correspondence was received by the Board:

- E-Mail to Pamela Helie, dated March 31, 2010 from Stephen Lackey, 9405 Riverview Road, P. O. Box 264, Broomes Island, MD 20615-0264, RE: Case No. 08-3559(C) Critical Area Variance Requested by Stoney's Restaurant
- E-Mail to Pamela Helie, dated April 1, 2010 from Richard Terlisner, P. O. Box 95, Broomes Island, MD 20615, RE Stoney's Broomes Island Appeal; Case No. 08-3559(C) CORRECTION
- E-Mail to Pamela Helie, dated April 16, 2010 from Don & Amelia Phillips, RE Subject Stoney's, w/attachment Statement for Court Re Stoney's docx

FINDINGS OF FACT & CONCLUSIONS

Based on the application and testimony and evidence presented at the hearing the Board makes the following Findings of Fact and Conclusions:

1. The Board finds the case was properly advertised, the property was posted, and affected property owners were notified in accordance with the Board's Rules of Procedure.
2. The Board finds that no new impervious surface has been added to the property; the property owner has reduced the amount of impervious surface; no existing vegetation was disturbed; much of the work was completed within the foundation area of the previously existing Oyster House; that unsightly items such as tanks and barges have been removed and replaced with a better appearance; that the environment has been improved by buffering with trees and grasses to minimize runoff and to build natural vegetative filtration, which improves water quality; no sewerage is being discharged to tidal waters; that portable sewerage collection facilities will be used and hauled away; and that access to the waterfront will be provided in accordance with the Ordinance. Based on these findings of fact the Board concludes the requested variance will not result in injury to the public interest.

3. The Board finds the Comprehensive Plan promotes tourism uses of the waterfront area on Marine Commercial (MC) properties. The Board further finds the property's Critical Area overlay zoning has been changed from Limited Development Area (LDA) to Intensely Developed Area (IDA); that the area will be used to the benefit of everyone, which is a goal of the Comprehensive Plan; that the development does not cause adverse effects on aquatic resources; and that the development is visually and aesthetically improved over its previous condition. Based on these findings of fact the Board concludes the requested variance will not adversely affect the Comprehensive Plan.
4. The Board finds that locating the banquet tent over the footprint of the former packing plant is desirable; that the storage unit is built around an existing walk-in cooler; that the building used for outside storage is located either over existing impervious area so no additional impervious area is being created; that some of the facilities have been located so that the intrusion into the buffer is minimized, and the buffer enhanced and increased; and that food preparation for banquets will be provided by the existing restaurant's kitchen. Based on these findings of fact the Board concludes the requested variance is the minimum adjustment necessary to afford relief from the regulations.
5. The Board finds the subject property is a small peninsula surrounded on three sides by water; that the property is located below the floodplain elevation; that it is located adjacent to an existing restaurant that will provide a kitchen; that the area was mostly compacted oyster shell, which is impervious, and that much of this oyster shell has been removed and replaced with a pervious area; that the buildings and use is not as intense as the IDA district would permit, which is desirable; and that the development was repositioned to lessen the impact on adjoining residential properties. Based on these findings of fact the Board concludes there are special circumstances peculiar to the property that inhibit its development in accordance with the Critical Area regulations. The Board further concludes that the applicant has demonstrated that a literal enforcement of the Critical Area program would result in unwarranted hardship to the applicant.
6. The Board finds that in the Broomes Island area and in other areas near the water there are other business and establishments that operate in the Marine Commercial areas that are even more intense and have more impervious surface areas. Based on these findings of fact the Board concludes that the subject request is a right that has been permitted to others in accordance with the provisions of the Critical Area program.
7. The Board finds there are other similar business that operate within the County's Critical Area; that the County wants to promote similar types of businesses in Marine Commercial areas in the County; that the applicant did not require any new impervious surface area; and that the applicant's plans do not require that this area be developed as intensely as it could be developed. Based on the findings of fact the Board concludes

that granting the variance as requested does not confer a special privilege on the applicant.

8. The Board finds that the conditions of the property existed before the current owners purchased the property; that even though the applicant proceeded without permits, this action had no bearing on the existing, underlying reasons for the variances; that the property owner did nothing adverse to the property that prompts this request; that the property owner is in the process of obtaining permits; and that the compacted oyster shell base was present before the property was acquired by the current owner. Based on these findings of fact the Board concludes that the requested variance does not result from actions by the applicant.
9. The Board finds that the development is consistent with the Critical Area's intent; that the water quality and runoff from this site will be cleaner and improved compared to previous conditions; that the use is less intense than other potential Marine Commercial uses; that sewerage discharge into the creek will be eliminated by removing the sewerage from the area. Based on these findings of fact the Board concludes that granting the requested variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat.
10. The Board finds the Critical Area is intended to preserve the shoreline to reduce runoff from inland and that is what has been demonstrated here with tree plantings; moving some of the facilities further from the waterfront; shortening roads into the property; less runoff; no sewerage discharge; and the establishment of natural filters for reducing runoff. The Board further finds that the overall habitat for wildlife has been improved. Based on these findings of fact the Board concludes that the applicant has overcome the presumption of non-conformance with the general spirit and intent of the Critical Area law.

ORDER

It is hereby ordered by a unanimous decision that the variances in the 50-foot Critical Area Waterfront buffer requirement for approval of development/structures within the buffer as shown on the variance site plan, including an onshore boat bar with canopy, banquet tent on slab, storage building, landscaping & grading, well/pump house, parking lot, boardwalk, concrete and brick pavers, walkways, concrete slabs, gravel & stone surfaces, and three (3) pedestrian access points 8-feet wide each as requested by Louis P. Stone, III be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. All permits and approvals required by the Calvert County Zoning Ordinance and the Department of Planning and Zoning and those required by any other departments,

agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained for the development activity approved by this Order.

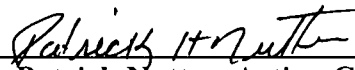
2. In accordance with Section 11-1.02.C.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of the Zoning Ordinance and subject to the enforcement provisions of Section 1-7.

APPEALS

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered: May 18 2010
Pamela P. Helie, Clerk


Patrick Nutter, Acting Chairman

IN THE CIRCUIT COURT OF MARYLAND
FOR CALVERT COUNTY

PETITION OF:
MARGARET MCHALE

FOR JUDICIAL REVIEW OF
THE DECISION OF THE
CALVERT COUNTY BOARD OF
APPEALS

Civil No. 04-C-09-000278AA

CASE NO. 03-3559(B)
LOUIS P. STONE

ORDER

This matter having come before this Court on July 27, 2009, and this Court having read and considered the Memoranda of Law filed by the parties, and having heard oral argument of counsel, this Court finds and declares that:

1. The Calvert County Board of Appeals erred as a matter of law by concluding that the requirements of the Annotated Code of Maryland, Natural Resources Article Section 8-1808 do not apply to this application for variance. This Court finds that the requirements of the Annotated Code of Maryland, Natural Resources Article, Title 8 Subtitle 18 apply to, and must be applied by, Calvert County notwithstanding any provision in local ordinances, or the lack of provisions in local ordinances.
2. The Calvert County Board of Appeals erred as a matter of law by concluding that the requirements of Natural Resources Article Title 8 Subtitle 18 do not apply to the violations in this case because these violations occurred before July 1, 2008. This Court finds that the controlling cases of *Armstrong v. Mayor & City Council of Baltimore*, ___ Md. ___ (No. 107, Sept. Term, 2008 slip op. July 23, 2009) and *Layton v. Howard County Board of Appeals*, 399 Md. 36 (2007) require that the provisions of the Natural Resources Article Title 8 Subtitle 18, including the provisions of that statute effective on July 1, 2008, be applied retroactively to this variance application.

3. The Calvert County Board of Appeals erred as a matter of law by concluding that the Board had authority to act on the variance application in this matter, despite the fact that the applicant had not complied with the mitigation obligations imposed by State law, Natural Resources Article 8-1808(c)(1)(iii)15.F and 8-1808(c)(4).
4. The Calvert County Board of Appeals lacked jurisdiction to issue a variance in this case, because Respondent Louis Stone failed to comply with the State law requirement cited above, to prepare a mitigation plan at a 4:1 ratio pursuant to the Calvert County Critical Area Program Chapter V Section A.2.d.3 and to fully implement that plan as a condition precedent to the Board's authority to issue a variance.
5. The Calvert County Board of Appeals acted in contravention of the requirements of Annotated Code of Maryland Natural Resources Article Title 8 Subtitle 18, in particular Section 8-1808(c)(1)(iii)15.F, and accordingly its Order and decision in Case No. 08-3559(B) is null and void.

It is hereby ORDERED that:

1. The Order of the Calvert County Board of Appeals dated January 29, 2009 in the above-captioned case is VACATED;
2. This matter is REMANDED to the Calvert County Board of Appeals for the following actions:
 - a. The Board of Appeals shall enter an order vacating and rescinding its Order of January 29, 2009; and
 - b. The Board of Appeals shall enter an order directing the Respondent, Louis Stone, to comply fully with Natural Resources Article 8-1808(c)(4) and the 4:1 mitigation requirements in the Calvert County Critical Area Program Chapter V Section A.2.d.3., including preparation, submission, and obtaining approval from the County

Planning & Zoning Office of a mitigation plan; and implementation of said plan to the satisfaction of the County Planning & Zoning Office.

- c. The Board of Appeals order shall provide that, unless and until all of the actions set forth above shall have been fully completed, and approved by the County Planning & Zoning Office, then the Board may not accept or process an application for variance for any of the structures which are the subject of Case No. 08-3559(B)(onshore boat bar, two ponds, landscaping and grading, well/pump house, boardwalk, concrete brick pavers, walkways, concrete slabs, gravel and stone, geoblock wall and columns), or for any other structure or development activity in the Critical Area on the Respondent's property.

3. This Court encourages the parties and the County Planning and Zoning Office to work diligently and cooperatively to ensure that the mitigation plan preparation, approval and implementation proceeds expeditiously, to the end that the Respondent may, if he elects to do so, file a new application for variance approval for some or all of the structures which are the subject of Case No. 08-3559(B)(as set forth in paragraph 2.c. above) after Respondent has fully complied with the requirements of Code, Natural Resources Article Section 8-1808(c)(1)(iii)15.F and 8-1808(c)(4) and the 4:1 mitigation requirement of the Calvert County Critical Area Program Chapter V Section A.2.d.3.

Costs to be paid by Respondent.

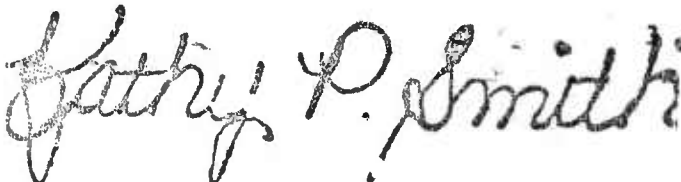
DATE

7/30/09

JUDGE



True Copy Test



Clerk of Circuit Court

CALVERT COUNTY BOARD OF APPEALS ORDER

Case No. 08-3559(B)

Public Hearing: December 4, 2008 & January 8, 2009

Louis P. Stone has applied (after-the-fact) for a variance in the 100-foot Critical Area waterfront buffer requirement for approval of structures in the buffer including an onshore boat bar, two ponds, landscaping & grading, well/pump house, parking lot, boardwalk, concrete brick pavers, walkways, concrete slabs, gravel & stone, and a geoblock wall & columns; a variance in the 15% Critical Area impervious surface requirement; a variance in the Critical Area 15% tree cover requirement; and a variance in the venting & elevation requirements of the Floodplain Management Ordinance as they pertain to structures and utilities for a banquet tent, kitchen, cooler/storage building, boat bar and well/pump house. The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel 15) and is zoned MC Marine Commercial.

The case was first presented December 4, 2008 before Board of Appeals members Mr. Michael Reber, Chairman; Mr. Michael Redshaw, member; and Lisa Sanders, Esquire, member (the Board). Carlton Green, Esquire, served as the Board's Counsel. Ms. Eugenia Cousineau Stone was present and testified at the hearing and was represented by Mr. Dan Kelsh from Collinson, Oliff & Associates, Inc. and Laurence Cumberland, Esquire. The Board deferred action at the December hearing to allow time for the applicant/applicant's representative to review the subject project with the Department of Planning and Zoning to address requirements for after-the-fact variance applications, including any necessary fines and mitigation. The Board also deferred action to allow the opportunity for the Board to visit the property.

The case was again presented January 8, 2009 before Board of Appeals members Mr. Michael Reber, Chairman; Mr. Michael Redshaw member; and Lisa Sanders, Esquire, member (the Board). Ms. Eugenia Cousineau Stone was present and testified at the hearing and was represented by Mr. Dan Kelsh from Collinson, Oliff & Associates, Inc. and Amy Welch, Esquire.

PRELIMINARY MATTERS

At the outset of the January hearing, Amy Welch, Esquire, raised a preliminary matter regarding the applicability of the July 1, 2008 revisions to *Maryland Code*, Natural Resources Article 8-1808, which addresses after-the-fact variance approval within the Critical Area, including requirements for payment of fines and performance of mitigation as established by a local jurisdiction. The Calvert County Department of Planning and Zoning and the Chesapeake Bay Critical Area Commission provided responses to the matter raised, including the opinion that the July 1, 2008 revisions to Article 8-1808 do apply to this case. (See Exhibit 1 of the Calvert County Department of Planning and Zoning.)

FINDINGS OF FACT: PRELIMINARY MATTERS

The Board makes the following Findings of Fact regarding the applicability of the July 1, 2008 revisions to Natural Resources Article 8-1808 to this case:

1. The original Notice of Violation issued to the property owner, Louis P. Stone, III, by the Calvert County Department of Planning and Zoning's Enforcement Division predates July 1, 2008. The Notice was dated June 24, 2008. Therefore, the purported violation occurred prior to the effective date of the law.
2. The Notice of Violation does not specifically refer to any violations of the Critical Area Law. It refers only to the failure of the property owner to obtain building permits. Subsequent investigation by another staff member within the Department of Planning and Zoning does not apply retroactively to the original Notice.
3. The fine of \$500 has been paid for the violation specified in the Notice of Violation.

**ANALYSIS OF THE APPLICATION OF
MARYLAND CODE NATURAL RESOURCES ARTICLE §8-1808**

In pertinent part, *Maryland Code* Natural Resources Article §8-1808 provides:

Section 8-1808 (c)(15)(F):

Satisfaction of all conditions specified under paragraph (4) of this subsection shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property;

Section 8-1808(c)(15)(G)(4):

A local jurisdiction may not issue a permit, approval, variance or special exception unless the person seeking the permit, approval, variance or special exception has . . . (ii) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and (iii) Performed the abatement measures in the approved plan in accordance with the local critical area program.

Section 8-1808(d)(6):

(i) A development activity commenced without a required permit, approval, variance or special exception is a violation of this subtitle.

(ii) A local jurisdiction may not accept an application for a variance to legalize a violation of this subtitle, including an unpermitted structure or development activity, unless the local jurisdiction first issues a notice of violation, including assessment of an administrative or civil penalty, for the violation.

(iv) Application for a variance under this paragraph constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

(v) If the local jurisdiction finds the activity or structure for which a variance is requested commenced without permits or approvals and:

1. Does not meet each of the variance criteria under this subsection, the local jurisdiction shall deny the requested variance and order removal or relocation of any structure and restoration of the affected resource; or

2. Does meet each of the variance criteria under this subsection, the local jurisdiction may grant approval of the required variance.

Section 8-1808(d)(7):

This subsection does not apply to building permits or activities that comply with a buffer exemption plan or buffer management plan of a local jurisdiction which has been approved by the Commission.

Section 8-1808(d)(8):

Notwithstanding any provision of a local law or ordinance, all of the provisions of this subsection shall apply to, and shall be applied by, a local jurisdiction in the consideration, processing and decision on application for a variance.

In analyzing the application of this statute, the Board of Appeals had the benefit of reviewing the July 2, 2008 letter of Assistant Attorney General Marianne E. Dise (Calvert County Department of Planning and Zoning Exhibit 1) that opines:

As of July 1, 2008, the prohibition on granting an "after the fact" variance without full satisfaction of conditions precedent applies to all pending applications for "after the fact" variances regardless of when the application was accepted, when the hearing was held, or when the development activity occurred.

This letter goes on to provide it is not a formal opinion of the Attorney General; that it is the view of the office (Critical Area Commission) "that any 'after the fact' variance issued after July 1, 2008, without proof of full satisfaction of fines and mitigation for the violation, is of no legal effect."

The Board of Appeals considered the argument of Counsel for the applicant at the January 6, 2009 hearing that the applicant has not been put on notice of any violations of the critical areas law; that there had been no damage to the environment; that there had been no clearing of trees or increases to impervious surfaces; that the pertinent sections of *Maryland Code*, Natural Resources Article §8-1808 were enacted after the violation for which the applicant had paid a fine. The Board of Appeals considered the input of Mary

Beth Cook, Calvert County Zoning Officer, who testified that it was not the policy of the Office of Planning and Zoning to re-violate property owners for unpermitted work; that the local ordinance was in the process of revision; that if it is an "after the fact" variance, a mitigation plan was required before any variance could be granted; and cited as her authority Exhibit No. 1 of the Calvert County Department of Planning and Zoning (being the July 2, 2008 letter of Assistant Attorney General Dise). Kerrie Gallo, a representative from the Chesapeake Bay Critical Area Commission, who is not an attorney, added that Assistant Attorney General Dise provides legal advice as Counsel to the Chesapeake Bay Critical Area Commission.

During its deliberation of the preliminary issue, Board of Appeals Chairman Michael Reber observed that a proposed site plan had been submitted as a mitigation plan by the applicant, but had not been accepted by the County as of the January 6, 2009 hearing (Applicant's Exhibit 8) and the Board of Appeals reviewed and considered Calvert County Department of Planning and Zoning Exhibit 2 being the December 22, 2008 letter of Mary Beth Cook, Zoning Officer, to Mr. Dan Kelsh. Chairman Reber also made the observation that Article 12 pertaining to grading did not appear to apply because the site was composed of oyster shells, not soil, and further observed there had been no violation issued for grading without a permit. It also appeared that the applicant had reduced the amount of impervious surface on the site. Chairman Reber added that the applicant had been issued a prior buffer variance for the tent and kitchen, and that what was before the Board of Appeals for consideration were variances for the boardwalk, boat bar, and a floodplain variance for non-residential structures.

Chairman Reber reiterated the preliminary issue in this case for the Board before proceeding further was whether the applicable Critical Area law requires a mitigation plan be approved and bonded prior to the variance being granted under the circumstances of the case.

CONCLUSION: PRELIMINARY MATTERS

The Board concludes that the requirements of Section 8-1808, including the requirement for mitigation planting, do not apply to this application for a variance and that the Board has the appropriate authority to act on the variance request.

As reasons for its conclusion, the Board considered the statutory scheme of *Maryland Code*, Natural Resources Article §8-1808(c)(iii)15 pertaining to minimum standards for a local jurisdiction to meet the goals of the State's critical area law that provides that all requirements of this subtitle, including administrative enforcement procedures, be in accordance with due process principles, including notice and the opportunity to be heard, which appear to the Board to have the requirements of the subtitle apply to prospective violations occurring subsequent to enactment of the revisions to Section 8-1808. The only violation for which the applicant has been notified precedes the date of enactment of the revisions to Section 8-1808, and does not pertain to the critical area law. The effective date of the revisions is July 1, 2008. The applicant has paid the \$500.00 fine assessed for the violation. The development activity by the applicant for which the violation notice was issued precedes the effective date of the revisions to Section 8-1808 when there was no requirement that mitigation be performed as a condition precedent for the granting of a variance. There has been no legal precedent that interprets the revisions to Section 8-1808 with respect to mitigation as having retroactive application to the development activity in the nature of the applicant's actions in this case.

The Board then proceeded with the hearing in this case.

AUTHORITY OF THE BOARD OF APPEALS

The jurisdiction of the Board of Appeals is based on Article 66B of the Annotated Code of Maryland, as amended. Article 11 Section 1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of the Ordinance. Article 11 Section 1.01.D of the Calvert County Zoning ordinance provides that the Board of Appeals shall have the authority to grant variances from the floodplain requirements of Section 8-2 of

the Zoning Ordinance and from the requirements of the Floodplain Management Ordinance.

TESTIMONY & EVIDENCE PRESENTED

1. The following Applicant's Exhibits were entered into the record at the December hearing:
 - Exhibit No. 1 – Application
 - Exhibit No. 2 – Plat Submitted With Application
 - Exhibit No. 3 – Stormwater Management Plan
 - Exhibit No. 4 – Revised Plat With Health Department Approval
 - Exhibit No. 5 – Denton's Oyster House, 3946 Oyster House Road, Special Exception & Variance Plan for Louis P. Stone III, dated October 2006
 - Exhibit No. 6 - Denton's Oyster House, 3946, Oyster House Road, Special Exception & Variance Plan for Louis P. Stone III, dated October 2006
 - Exhibit No. 7 – Stoney's Banquet Facility, 3946 Oyster House Road, Site, Layout & Landscape Plan for Louis P. Stone III, last dated 10/16/08
2. The following Staff Exhibits were entered into the record at the December hearing:
 - Exhibit No. 1 – Staff Report, prepared by Roxana Whitt, Board of Appeals Administrator
 - Exhibit No. 2 – Memo from Mary Beth Cook, Zoning Officer, to Roxana Whitt, dated November 25, 2008
3. The following Calvert County Department of Planning & Zoning representatives were present at the December hearing and testified regarding the requested variances:
 - Mary Beth Cook, Calvert County Zoning Officer, 150 Main Street, Prince Frederick, MD 20678
 - David Brownlee, Principal Environmental Planner, 150 Main Street, Prince Frederick, MD 20678
 - John Swartz, Critical Area Planner, 150 Main Street, Prince Frederick, MD 20678

4. The following Applicant's Exhibits were entered into the record at the January 8, 2008 hearing:
 - Exhibit No. 8 – Stoney's Banquet Facility, Site, Layout & Landscape Plan, approved 12/08/08 by DJK, Sheet No. 2, Case No. SPR 06-37
 - Exhibit No. 9 – Natural Resources Article 8-1807, Pages 296-303
5. The following Calvert County Department of Planning & Zoning representatives were present at the January hearing and testified regarding the requested variances:
 - Mary Beth Cook, Calvert County Zoning Officer, 150 Main Street, Prince Frederick, MD 20678
 - David Brownlee, Principal Environmental Planner, 150 Main Street, Prince Frederick, MD 20678
6. The following Calvert County Department of Planning & Zoning Exhibits were entered into the record at the January hearing:
 - Exhibit No. 1 – Letter dated July 2, 2008 to the Calvert County Board of Appeals, c/o Department of Planning and Zoning, from Marianne E. Dise, Assistant Attorney General, Principal Counsel, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401; RE: Notice of Important Changes to Law re: Critical Area Variances
 - Exhibit No. 2 – Letter dated December 22, 2008 to Mr. Dan Kelsh, COA, from Mary Beth Calvert County Zoning Officer, Department of Planning and Zoning, 150 Main Street, Prince Frederick, MD 20678; RE Stoney's Banquet Facility, SPR #06-37, BOA 08-3559
7. The following representatives from the Chesapeake Bay Critical Area Commission (CBCAC) were present and testified at the January hearing:
 - Kerrie Gallo, CBCAC, 1804 West Street, Suite 100, Annapolis, MD 21401
 - Roby Hurley, CBCAC, 1804 West Street, Suite 100, Annapolis, MD 21401
8. Public Testimony was received at the January hearing from:
 - Robert Nichols, 6800 Fleetwood Road, #1204, McLean, VA 22101

FINDINGS OF FACT: CRITICAL AREA VARIANCES

Based on the application, the site visit, and testimony and evidence presented at the hearings the Board makes the following Findings of Fact:

1. As shown on Applicant's Exhibit No. 2, the property consists of 1.31 acres and is situated on the southeast side of Oyster House Road in Broomes Island. The property was the former site of the Warren Denton Seafood Company, which operated there for more than 50 years and which ceased operation ~10 years ago. The applicant in this case, Mr. Stone, purchased the property from Ms. Denton in 2002.
2. At the time the property was purchased by the applicant, it contained an oyster processing facility, numerous accessory buildings, a fuel tank, and a large cold storage facility; additionally, two large barges were positioned in Island Creek off the southeast corner. The oyster house was located immediately adjacent to the waterfront and the accessory structures were scattered throughout the property. The oyster house and accessory structures were severely damaged by Hurricane Isabel. Significant site cleanup conforming to the general purpose and intent of Natural Resources Article 8 and the County's Critical Area Program has been accomplished by the applicant. Partially demolished commercial structures, a commercial fuel tank, and semi-submerged barges have been removed.
3. The applicant previously received a variance in the waterfront buffer requirements and Special Exception approval from the Board of Appeals for construction of a banquet facility tent, additions to a storage building, and conversion of an existing building to a kitchen (See BOA No. 06-3382). The only conditions of the 2006 approval were that all permits and approvals required for construction be obtained, and that all requirements for stormwater management and requirements of the Floodplain Management Ordinance be met. The applicant received approval for an extension to this Special Exception (BOA 06-3382) at the December 4, 2008 Board of Appeals hearing for this case. (See Board of Appeals Order No. 08-3559(A)).
4. Subsequent to the original approval, the applicant commenced work on the property without benefit of site plan approval and without the required development permits. The unpermitted work includes the items that are the subject of variance requests in this case, namely the banquet tent, a boat bar, two ponds, landscaping, a well/pump house, parking lot, boardwalk, concrete brick pavers, walkways, concrete slabs, gravel and stone, and a geoblock wall and columns. (Note: Variance approval for the kitchen was deleted from this application as the kitchen received variance approval in BOA 06-3382 and it complies with the requirements of the Floodplain Management Ordinance.)
5. The property is zoned Marine Commercial which encompasses and expressly allows a wide variety of uses including those uses employed by the Warren Denton Seafood

Company and those uses currently employed by the applicant since purchasing the property. The applicant proposes to use the tent on the property for banquets and parties and to use the accessory structures identified in this case to support the banquet facility use. The Comprehensive Plan indicates that "Calvert's commercial waterfront is one of the County's main tourism attractions" and "the County needs to be proactive in facilitating its proper and effective use." The Comprehensive Plan also identifies allowing "maximum utilization of areas zoned Marine Commercial without causing significant adverse effect on aquatic resources, visual aesthetics, or neighboring residential uses" as an action item for implementation of the Plan.

6. The property was assigned a Critical Area Limited Development Area (LDA) overlay zoning in 1988 when Calvert County's Critical Area Program was adopted (See Calvert County Zoning Ordinance 8-1.04). The Zoning Ordinance indicates that a goal in guiding development within the Critical Area's LDA zone is to maintain, to the extent practicable, existing areas of natural habitat. The subject property has been intensely developed over the many years of its commercial use. The substrate of the subject property consists primarily of hard-packed and impervious crushed oyster shell resulting from years of placement of used shell around the oyster-house building to maintain a parking area and work lot. The impervious nature of the property existed prior to Critical Area law and continues to the present. With the possible exception of a small area in the southwest corner of the property, the entire property is underlain by impervious oyster shell and gravel, and no natural vegetation or habitat has been present on site since long before Critical Area law. The impervious nature of the property was a Finding of Fact in the Board's earlier case (See BOA 06-3382). The only vegetation currently on site is that which has been planted in landscaping beds by the applicant since 2006. Without replacement of large sections of the substrate, the property will not support natural tree cover.
7. It appears that the subject property and the adjacent restaurant property should originally have been assigned the Critical Area designation "Intensely Developed Area" (IDA) rather than Limited Development Area (LDA) because both properties have been intensely developed and in continuous, purely commercial use since prior to the adoption of the Critical Area law in 1988. The significance of this is that LDA properties are required to meet 15% tree cover thresholds and are limited to 15% impervious surface cover, while these provisions do not apply to IDA properties. Testimony by representatives of Calvert County's Department of Planning and Zoning at the January hearing indicated that IDA designation would be more appropriate for this property and that the County is in the process of requesting a change in the property's designation from LDA to IDA. The County has, however, declined to allow the site development plan for this property to proceed to approval unless the applicant obtains variances in the 15% impervious surface limitation and the 15% tree cover requirement, despite the proposed change to IDA and the longstanding history of the property's use and condition.

8. Testimony and evidence also demonstrated that the subject property has not had a waterfront "buffer" since before 1986, and the property should have been designated "buffer-exempt" when Calvert County's Critical Area Program was adopted, as was the adjacent restaurant property. Testimony by representatives of Calvert County's Department of Planning and Zoning at the January hearing indicated that the County is in the process of requesting buffer-exemption status for this property, thereby granting relief from the 100-foot buffer requirements. The County has, however, declined to allow the site development plan for this property to proceed to approval unless the applicant obtains a variance in the 100-foot waterfront buffer requirements for the development activities.
9. The Critical Area law provides that continuation of any use legally in existence on the date of Critical Area Program approval is permitted (See Calvert County Zoning Ordinance, Section 8-1.07.A.). If the use has been abandoned for more than one year, then it is no longer grandfathered. The applicant's representative testified that there has been continued use of the impervious surface on the property since it was purchased by the applicant in 2002. There is no evidence that this is not the case. The closing and removal of the oyster house itself does not constitute abandonment of use of the property, or more specifically, abandonment of the use of the existing impervious surface on the property. Accordingly, the Board finds that neither a variance in the 15% tree cover requirement nor a variance in the impervious surface limit of 15% are required, as provided by the grandfathering clause of the Calvert County Zoning Ordinance and Maryland Critical Area Law.
10. The subject property is surrounded on three sides by Island Creek. Consequently, nearly the entire site is encompassed by the 100-foot buffer, with the exception of a narrow strip measuring 20-30 feet wide down the center. The Critical Area Buffer is defined by the Zoning Ordinance as "An existing naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances." There is not currently, nor has there been for many years prior to advent of Critical Area Law, a "buffer" on this property. The structures for which a buffer variance has been requested are structures that are accessory to the principal use of the entire property as a banquet facility. Denial of a buffer variance to place those structures noted in this application atop existing impervious surfaces would result in unwarranted hardship as it would deny the applicant reasonable and significant use of the entire Marine Commercial-zoned property for a viable marine commercial enterprise.
11. The overall development proposal includes a plan for considerable landscaping throughout the property in raised beds. Much of the landscaping is already in place, although it is unclear whether it will thrive on this site. In addition, some pervious surfaces were created atop the crushed oyster shell by installation of turf, topsoil and mulch. Impervious surfaces which previously totaled 1.18 acre now total .85 acre. The Calvert County Department of Public Works, Engineering Bureau, provided a

memorandum for the record indicating that with the amount of existing impervious area being reduced by 28%, the Department offers no objection to the development and indicates that no additional stormwater management will be required. Section 8-1.04 of the Zoning Ordinance provides that a goal in guiding development within the Critical Area's LDA zone is to maintain or, if possible, improve the quality of runoff and ground water entering the Chesapeake Bay and its tributaries. The reduction in impervious surface and the additional plantings aid in improving the quality of runoff from this property.

12. Other Marine Commercial properties within Calvert County are similarly developed, with structures and impervious surfaces located in the waterfront buffer. Such properties that are located in close proximity to the subject property include marinas within the Broomes Island community and the adjacent restaurant property. The variance requested here is a right commonly enjoyed on Marine Commercial properties and would not be a grant of special privilege that is not enjoyed by Marine Commercial properties throughout Calvert County.
13. The variance request results from the impact the 100-foot buffer has on this Marine Commercial property and from the property's existing, non-conforming, but grandfathered, impervious surfaces. The location of the buffer, the impervious surfaces and the property's zoning are not actions of the applicant. Any attempt to develop this property by any citizen would require variance approval under the prevailing Zoning Ordinance interpretations and County requirements.
14. The variance is the minimum adjustment necessary to allow reasonable and effective development of the site. Without a buffer variance for the structures as proposed, the structures would be concentrated within the narrow 20-30 foot spine of the property that lies outside the 100-foot buffer, resulting in ineffective design and use of the property.
15. The application for variance approval was made in writing to the Board of Appeals with a copy provided to the Critical Area Commission. The Critical Area Commission provided written comments for the record and its representatives testified on this matter at the Public Hearings. The Critical Area Commission's comments and testimony were duly considered, as were the comments and testimony of the Calvert County Zoning Officer and Environmental Planners.

FINDINGS OF FACT: FLOODPLAIN VARIANCES

1. The entire property lies within the 100-year tidal floodplain. The Base Flood Elevation on the property is 6.0 feet. The majority of the property falls between elevations 2 and 4 feet. No portion of the buildable area of the property lies above the

Base Flood Elevation. The applicant has requested variances to the building and utility elevation requirements of the Floodplain Management Ordinance.

2. The Floodplain Management Ordinance requires that the first floor of any structure greater than 300 s.f. in size in the floodplain be elevated at least to the Flood Protection Elevation, which is 7 feet on this property.
3. The kitchen meets flood elevation requirements, as is evidenced by the Elevation Certificate provided by Collinson Oliff, & Associates, Inc. Thus, it does not require variance approval and no action by the Board is necessary.
4. The pump house does not meet elevation requirements. It is simply a small shed built around the existing well and pump. No elevation of that structure is required; thus, no action by the Board is necessary for the pump house structure.
5. The utility shed is sufficiently small (<300 s.f.) to be exempt from elevation requirements; thus, no action by the Board is necessary.
6. The tent and storage building do not meet elevation requirements and are larger than 300 s.f. To require elevation of the tent and the storage building with cooler would mean that these structures would have entrances that are 3 to 5 feet above grade. The storage building was built around an existing cooler that was part of the original oyster house development. A "U-shaped" addition encompasses the cooler. Elevation of the cooler is not feasible because of its original construction; elevation of the addition around the cooler is likewise not feasible. To require elevation of the storage building/cooler would impose exceptional and unwarranted hardship on the applicant. The storage building can be vented to allow flow-through of flood waters. Elevation of the tent is meaningless because it is not a permanent enclosed facility. A requirement for its elevation would inflict exceptional hardship on the applicant. As constructed it will allow flow-through of flood waters.
7. The boat bar is not elevated. Its construction includes a boat with a shelf for seating around a portion of the outer perimeter, and a non-permanent tent overhead. There is no enclosed area in the boat bar and no need for elevation or venting of this structure.
8. With the exception of the kitchen, the other structures will not have utilities elevated. Because these are not residential structures and are not anticipated to be in use during floods, the necessity of elevating the structures and utilities is of small concern with regard to safety.

CONCLUSIONS: CRITICAL AREA VARIANCES

Based on the above Findings of Fact, the Board concludes the following (in accordance with Section 11-1.01.B of the Calvert County Zoning Ordinance):

1. The Board concludes that it has the authority to grant the subject variances from the Critical Area requirements of Section 8-1 of this Ordinance. Section 11-1.01.b. states that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of this Ordinance.
2. The Board concludes that the applicant has overcome the presumption of nonconformance as required in Section 11-1.01.B.2 &3 of the Zoning Ordinance.
3. The Board concludes that the applicant has met each of the required variance standards as:
 - a. The variance will not result in injury to the public interest. The subject property is zoned Marine Commercial which encompasses and expressly allows the commercial use envisioned by the applicant. The improvements requested serve to improve the environmental and aesthetic properties of the property. Ponds, landscaping and grading will promote some habitat virtues where none existed before. The amenities provided are consistent with the general goals of good development in the County. Safety is also promoted by solid walkways, boardwalks and ample parking.
 - b. The variance will not adversely affect the implementation of the Comprehensive Plan. The Comprehensive Plan recognizes that "Calvert's commercial waterfront is one of the County's main tourism attractions" and "the County needs to be pro-active in facilitating its proper and effective use." Additionally the Comprehensive Plan promotes maximum utilization of areas zoned Marine Commercial without causing adverse impacts on aquatic resources, visual aesthetics, or neighboring residential uses."
 - c. The variance is the minimum adjustment necessary to afford relief from the regulations. The structures and improvements that are the subject of this waterfront buffer variance request are the minimum necessary to provide for accessory support for the Special Exception use of banquet facility that was approved in Board Order No. 06-3382. These features provide for safe walkways and congregational areas and the landscaping provides improvements to water quality and habitat. Their specific placement on the property is the minimum adjustment necessary to provide adequate mobility and use by patrons.
 - d. Special conditions and circumstances peculiar to the land exist on this property and a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship. Literal application of the waterfront buffer restrictions leaves only a very small area in the center of the property to use. This literal interpretation would render this commercial property, in use for many years, completely unsuited for any commercial use

and would result in unwarranted hardship for the applicant.

- e. A literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County. Other properties zoned as Marine Commercial which have existed as commercial operations as long as this property enjoy similar rights.
- f. The granting of the variance would not confer upon the applicants a special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's and the State's Critical Area. Rather, the variance is consistent with the Comprehensive Plan which allows for "maximum utilization" of Marine Commercial properties and it is consistent with the Marine Commercial uses on numerous other properties in the County.
- g. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant. This property developed over many years prior to Critical Area law, was completely devoid of vegetation and more than 90% impermeable. This variance request results from the imposition of a 100-foot buffer and other Critical Area regulations on an existing, developed property. It also results from the applicant's desire to minimize the property's environmental impact by improving its permeability and introducing vegetation and habitat while maintaining the property's commercial value.
- h. Granting the variance will not adversely affect water quality and adversely impact fish, wildlife, and plant habitat within the County's Critical Area, and granting the variance will be in harmony with the general spirit and intent of the Critical Area law. Strong positive environmental improvements have already been demonstrated on this property and will likely accrue in the future. Stormwater attainment will be enhanced, permeability will be increased, vegetation and habitat will be introduced and the waterfront will be aesthetically and environmentally enhanced.

CONCLUSIONS: FLOODPLAIN VARIANCES

Based on the above Findings of Fact, the Board concludes the following (in accordance with Section 11-1.01.D of the Calvert County Zoning Ordinance):

1. That the Board has the authority to grant the subject variance from the floodplain requirements of Section 8-2 of the Calvert County Zoning Ordinance and the Floodplain Management Ordinance.
2. That peculiar and unusual practical difficulties exist on the subject parcel and such difficulties are created by the topography of the property and the location of long existing commercial structures within the Floodplain area.

3. That the applicant has demonstrated that the variance will not result in injury to the public interest as these structures are not occupied for residential or continuous use.
4. That granting the variance will not adversely affect the implementation of the Comprehensive Plan because the property is located within a Marine Commercial zone which expressly allows the uses intended by the applicant and promotes maximum utilization of these properties.
5. That the variance requested is the minimum adjustment necessary to afford relief from the regulations.
6. That the variance requested is not based upon conditions or circumstances which are the result of actions by the applicant but is due to the elevation of the property and of the existing structures on the property.
7. That the applicant did demonstrate and the Board did find a showing of good and sufficient cause. Elevating the tent and cooler would preclude reasonable use of these structures. None of the structures are residential in nature and they are not anticipated to be in use during floods. The Board concludes there is no real concern with regard to safety or increased threat to the public from the proposed variance to the elevation requirements. The banquet tent is a fabric covered metal frame which could be disassembled or its sides rolled up in the event of flooding.
8. That failure to grant the requested variance would result in an unwarranted hardship since the structures could no longer be used for their intended purpose. It would not be physically feasible to raise the cooler as it has been in place for many years.
9. That granting a variance will not result in increased flood heights, increased threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local or State laws or Ordinances.
10. That the variance is the minimum necessary to afford relief considering the flood hazard at the project's location.
11. That comments were solicited regarding this variance application from the Maryland Department of the Environment, such comments were considered by the Board of Appeals, and such comments contained no objection to the variances requested.

ORDER

It is hereby ordered by a unanimous decision that the existing impervious surfaces and the absence of tree cover on the property are grandfathered conditions, and that variances in the 15% impervious surface limitations and 15% tree cover requirements are not required for compliance with the Critical Area law and the Critical Area component of the Calvert County Zoning Ordinance.

It is hereby further ordered, by a unanimous decision, that the variance in the 100-foot waterfront buffer requirement for approval of structures in the buffer including an onshore boat bar, two ponds, landscaping & grading, well/pump house, parking lot, boardwalk, concrete brick pavers, walkways, concrete slabs, gravel & stone, and a geoblock wall & columns; and a variance in the venting & elevation requirements of the Floodplain Management Ordinance as they pertain to the structures and utilities for a banquet tent and a cooler/storage building as requested by Louis P. Stone be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. All permits and approvals required by the Calvert County Zoning Ordinance and the Department of Planning and Zoning and those required by any other departments, agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained before commencing the development activity approved by this Order.
2. The Applicant shall sign a Waiver of Liability holding the County Commissioners of Calvert County, Maryland, the County's employees, servants, and representatives fully and totally harmless for any personal injury or property damage sustained by any individual or corporation as a result of any construction, development, building, or building permit issued or allowed by Calvert County relative to the subject construction under this Order. The Waiver of Liability shall be submitted to the Clerk to the Board of Appeals for approval prior to submittal for the building permit application. The fully executed Waiver of Liability shall be recorded in the Land Records for Calvert County with a copy placed in the subject Board of Appeals file.
3. None of the structures that are the subject of the variance requests in this case shall be used for residential purposes.
4. In accordance with Section 11-1.02.C.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of the Zoning Ordinance and subject to the enforcement provisions of Section 1-7.

APPEALS

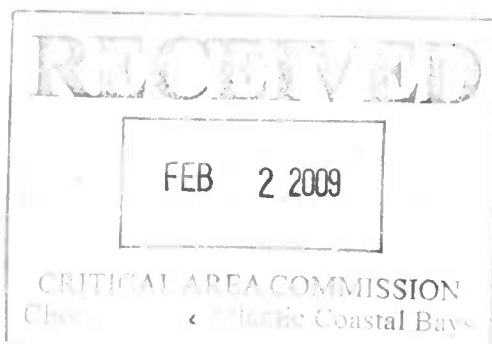
In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered: January 29 2009
Pamela P. Helie, Clerk



Michael J. Reber, Chairman



Collinson, Oliff & Associates, Inc.

PO Box 2209
Prince Frederick, MD 20678
Phone: 410-535-3101 • 301-855-1599
Fax: 410-535-3103
Email: dkelsh@coainc.com

Memo

To: Board of Appeals

Attn: Roxanna Whitt

From: Dan Kelsh

CC: file

Date: 10/16/08 Revised 02/15/10

Project: Stoney's ~ Banquet Facility
COA Job #: 1-8668

Re: BOA Request Information

The attached package is submitted for review and action as summarized below. If you have any questions or require additional information, please call.

1. Critical Area Criteria Variance:

- N/A
- a. Structures within the buffer including the boat bar, kitchen, banquet tent on slab, storage building/area, decorative ponds (2), landscaping & grading, well/pump house, parking lot, boardwalk, concrete & brick pavers, walkways, concrete slabs, gravel & stone and a geo-block wall and columns. This variance request includes the reduction of required waterfront setbacks to the structures as existing on-site.
 - b. The existing site is almost entirely impervious (1.18-ac; 90.1% - building, slab, parking lot & compacted oyster shells). The owner has reduced the impervious area as shown (0.69-ac; 52.7%) but cannot meet the 15% maximum required by code and requested by staff.
 - c. The existing site is almost entirely void of trees. The owner has attempted to plant trees with mixed success. The owner requests that the plan as revised be accepted as meeting the 15% tree cover requirement.

2. Flood Plain Ordinance Variance: It would be impractical to raise the banquet tent slab, cooler/storage building, boat bar, and well/pump house to meet the requirements of the flood plain ordinance. It is requested to keep the facilities at the current elevations and permit limited utilities below the flood protection elevation.

3. Special Exception Extension (BOA #06-3382): The original SE approval was set to expire on 1/8/09. The Board approved a two (2) year extension from the order date to allow sufficient time for final site plan approval and permitting (BOA Order 08-3559A dated 12/17/08).

AFFECTED PROPERTY OWNERS LIST

YOU MUST LIST THE NAMES AND ADDRESS OF ALL ADJOINING PROPERTY OWNERS AND THE OWNERS OF THOSE PROPERTIES DIRECTLY ACROSS ALL ADJACENT STREETS AND/OR RIGHTS OF WAY. NOTE: FAILURE TO CORRECTLY LIST NAMES AND ADDRESSES OF ALL AFFECTED PROPERTY OWNERS MAY RESULT IN A DELAY TO YOUR CASE.

T.M. 386

P 24

Name: Elizabeth Fern Corner

Address: 3954 Oyster House Rd, Barnes Is., MD 20615

P. 32

Name: P.A.R. Limited Partnership

Address: PO Box 241 Danell, MD 20627

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: COA, Inc c/o Dan Keloh

Address: PO Box 2209 PR, MD 20678

IF YOUR PROPERTY ADJOINS A PRIVATELY OWNED ROAD, YOU MUST LIST THE NAME AND ADDRESS OF THE OWNER BELOW:

Name: _____

Address: _____

CRITICAL AREA COMMISSION
FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 WEST STREET, SUITE 100
ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: Calvert County

Date: 2/15/10

Tax Map #	Parcel #	Block #	Lot #	Section
<u>32C</u>	<u>15</u>			

FOR RESUBMITTAL ONLY

Corrections ☐
Redesign ☐
No Change ☐
Non-Critical Area ☐

*Complete Only Page 1
General Project Information

Tax ID: 1-005669

Project Name (site name, subdivision name, or other) Storey's Banquet Facility

Project location/Address 3946 Oyster House Rd

City Brownes Island, MD Zip 20615

Local case number _____

Applicant: Last name Storey, III First name Louis P.

Company _____

Application Type (check all that apply):

Building Permit ☒
Buffer Management Plan ☒
Conditional Use ☐
Consistency Report ☐
Disturbance > 5,000 sq ft ☒
Grading Permit ☒

Variance ☒
Rezoning ☐
Site Plan ☒
Special Exception ☐
Subdivision ☐
Other ☐

Local Jurisdiction Contact Information:

Last name Whitt First name Roxana

Phone # 410 535-1600 x2335 Response from Commission Required By _____

Fax # 410-414-3092 Hearing date _____

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

Banquet Facility

Intra-Family Transfer ☐ Yes
Grandfathered Lot ☐

Growth Allocation ☒ Yes
Buffer Exemption Area ☒ In Process

Project Type (check all that apply)

Commercial ☒
Consistency Report ☐
Industrial ☐
Institutional ☐
Mixed Use ☐
Other ☐

Recreational ☐
Redevelopment ☒
Residential ☐
Shore Erosion Control ☐
Water-Dependent Facility ☐

SITE INVENTORY (Enter acres or square feet)

	Acres	Sq Ft
IDA Area		
LDA Area	<u>1.31</u>	<u>-</u>
RCA Area		
Total Area		

Total Disturbed Area

Acres	<u>1.11</u>
Sq Ft	<u>-</u>

of Lots Created N/A

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees	<u>0</u>	<u>0</u>	Existing Impervious Surface	<u>1.18</u>	<u>-</u>
Created Forest/Woodland/Trees			New Impervious Surface	<u>-</u>	<u>-</u>
Removed Forest/Woodland/Trees	<u>0</u>	<u>0</u>	Removed Impervious Surface	<u>0.49</u>	<u>-</u>
			Total Impervious Surface	<u>0.69</u>	<u>-</u>

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance	<u>1.00</u>	<u>-</u>	Buffer Forest Clearing	<u>0</u>	<u>-</u>
Non-Buffer Disturbance	<u>0.11</u>	<u>-</u>	Mitigation	<u>2.20</u>	<u>96,032</u>

Variance Type

Buffer ☒
Forest Clearing ☐
HPA Impact ☐
Impervious Surface ☒
Expanded Buffer ☐
Nontidal Wetlands ☐
Setback ☒
Steep Slopes ☐
Other ☒ Flood Plain

Structure

Acc. Structure Addition ☐
Barn ☐
Deck ☐
Dwelling ☐
Dwelling Addition ☐
Garage ☐
Gazebo ☐
Patio ☐
Pool ☐
Shed ☐
Other ☒ Commercial Structures

Collinson, Oliff & Associates, Inc.

PO Box 2209
Prince Frederick, MD 20678
Phone: 410-535-3101 • 301-855-1599
Fax: 410-535-3103
Email: dkelsh@coainc.com

Memo

To: Board of Appeals
Attr: Roxanna Whitt
From: Dan Kelsh
CC: file
Date: 04/24/09
Project: Stoney's ~ Banquet Facility
COA Job #: 1-8668
Re: BOA Request Information

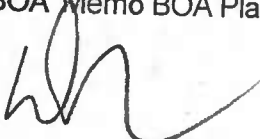
The BOA package was previously submitted for review and action. Due to new information contained on the BOA Referral form, the information below is offered to clarify the requested actions. If you have any questions or require additional information, please call.

1. Revisions to previously approved variances (BOA #'s 06-3382 & 08-3559) including the following clarifications to be made as part of any action taken:
 - a. 100-ft Buffer - Structures within the buffer include everything previously approved and the revised parking area shown on the plan submitted with the application which comes to within 25-ft of the waterfront. There is no requirement for a buffer management plan. This is based on the previous cases documenting nearly the entire existing buffer is impervious which is permitted to remain (but not be increased) under County & CAC codes.
 - b. Lot Coverage - The existing site is almost entirely impervious 1.18-ac (90.1% - building, slab, parking lot & compacted oyster shells). The revised plan has reduced the impervious area to 0.79-ac (60.3%) which is less than the 0.85-ac (64.9%) approved in the BOA #08-3559 Order. The site cannot meet the 15% maximum requested by staff.
 - c. Tree Coverage - The existing site was almost entirely void of trees. The BOA previously approved a variance to the 15% tree cover requirement and the proposed revision does not reduce the number of trees planted on the property.

**Collinson, Oliff &
Associates, Inc.**

PO Box 2209
Prince Frederick, MD 20678
Phone: 410-535-3101
Fax: 410-535-3103
e mail: dkelsh@coainc.com

Memo

To: Roxana Whittt, BOA Memo BOA Plans
From: Dan Kelsh 
CC: Jeannie Stone
Date: 03/23/09
Re: Stoney's Banquet Facility
BOA #s: 06-3382 & 08-3559
SPR 06-37
COA #: 1-8668

Please review this memo and the attached plans for determination of whether the proposed revision complies with the original and subsequent BOA approvals.

The Stone's are requesting that they be permitted to revise the site plan reviewed at BOA to relocate a portion of the parking shown on the BOA#08-3559 site plan to be fully contained on their property; Parcel 15 (P.15). Previously, these spaces had been shown on an existing paved parking area on Parcel 24 (P.24) in order to reduce the amount of impervious coverage required, improve the aesthetics of the landscaped area and based on a contract for the Stone's to purchase P.24 which has since fallen through.

The proposed revision to the site plan is required for the following reasons:

1. The pending sale of P.24 to the Stone's has been withdrawn. The Stone's request for an easement to use the parking area has been denied.
2. The latest P&Z site plan comments for this project require providing an easement for the parking spaces on P.24. Since this was refused, the parking spaces must be moved onto P.15 as originally proposed on the BOA 06-3382 site plan.
3. This is one of the final comments that must be addressed in order to request site plan approval. The only other remaining significant comment is the Environmental Planner's requirement for a mitigation plan and bond to correct the violation discussed during the latest BOA Hearing.
4. From a site plan processing standpoint, these kind of changes are not uncommon since plans are brought to the BOA prior P&Z and other agencies completing their final reviews of the proposed project. Therefore the BOA plan is conceptual to some level and following BOA approval; the plan is revised as necessary to address all other remaining agency comments successfully. This seems to be generally inferred by the standard condition imposed by the BOA to obtain final site plan and permit approvals.

OK
3/24/09

The information below is offered as background in addition to the contents of the BOA Case files:

1. BOA 06-3382 Site Plan dated 10/18/06 & revised 12/7/06:

- A. Lot Coverage – The plan submitted shows virtually the entire property covered in washed stone. The proposed plan notes a small net reduction in the existing impervious area.
- B. Impervious Area – The Critical Area chart on the submittal indicates 0.41-ac impervious coverage existing and 0.37-ac proposed (neglects washed stone & limits of existing oyster shells). It was during the time leading up to this BOA Hearing that P&Z, CAC and DPW staff required the impervious area calculation to be revised to include the proposed washed stone due to Critical Area requirements. At that point, the existing oyster shell surfaces had to also be recognized as impervious area due to the Critical Area criteria. The BOA Hearing then appropriately discussed the existing site area as 'nearly 100% impervious' as recorded in the BOA Order.
- C. Parking Spaces - Thirty (30) parking spaces are delineated; the majority of which are within the washed stone area.
- D. Parking Limits – The parking spaces are all within the boundary of P.15 and do not make use of the paved area within P. 24. There was no acquisition of Parcel 24 contemplated at this time.

2. BOA 08-3559 Site Plan dated 10/16/08 & revised 12/8/08:

- A. Lot Coverage – The plan submitted notes the existing property to be predominately impervious coverage. The proposed plan shows and notes a substantial net reduction in the existing impervious area.
- B. Impervious Area – The Critical Area chart on the submittal indicates 1.18-ac impervious coverage existing and 0.85-ac proposed. The net reduction as discussed during the relevant hearing was the creation of landscaped lawn areas within the property. The proposed impervious coverage was revised to 0.69-ac (12/08/08) as a result of addressing outstanding site plan comments from agencies and further review of the CAC requirements for submittal of a lot coverage plan.
- C. Parking Spaces – Twenty four (24) parking spaces are delineated based on the calculated parking requirement at that time. The majority are on the existing paved area. This number was increased to twenty five (25) as the result of addressing outstanding site plan comments from agencies (12/08/08).
- D. Parking Limits - Parking spaces are about evenly divided between P.15 and P.24 due to the Stone's successful negotiation for purchase of P. 24.

3. BOA 08-3559 Site Plan Revision dated 3/19/09:

- A. Lot Coverage – The plan submitted notes the existing property to be predominately impervious coverage. The proposed plan continues to show and notes a large net reduction in the existing impervious area.
- B. Impervious Area – The Critical Area chart on the submittal indicates 1.18-ac impervious coverage existing and 0.79-ac proposed (0.10-ac increase from 12/08/08 plan). This slight increase remains below the original and subsequent BOA approval and the reduction required to fully address stormwater management on-site.
- C. Parking Spaces – Twenty five (25) parking spaces shown are the final number required by P&Z for site plan approval. The majority are on the existing paved and gravel areas.
- D. Parking Limits – All spaces have been removed from P.24 and are fully contained on P.15.

AFFECTED PROPERTY OWNERS LIST

YOU MUST LIST THE NAMES AND ADDRESS OF ALL ADJOINING PROPERTY OWNERS AND THE OWNERS OF THOSE PROPERTIES DIRECTLY ACROSS ALL ADJACENT STREETS AND/OR RIGHTS OF WAY. NOTE: FAILURE TO CORRECTLY LIST NAMES AND ADDRESSES OF ALL AFFECTED PROPERTY OWNERS MAY RESULT IN A DELAY TO YOUR CASE.

TM 32C
P. 24

Name: Elizabeth Fern Loner
Address: 3954 Oyster House Rd. Branes Isl., MD 20615

TM 32C
P. 32

Name: P.A.R. Limited Partnership
Address: PO Box 241 Dowell, MD 20627

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Name: Dan Kelsh c/o COA Inc.
Address: PO Box 2209 P.F., MD 20678

IF YOUR PROPERTY ADJOINS A PRIVATELY OWNED ROAD, YOU MUST LIST THE NAME AND ADDRESS OF THE OWNER BELOW:

Name: _____
Address: _____

CRITICAL AREA COMMISSION
FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 WEST STREET, SUITE 100
ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: Calvert County

Date: 4/15/09

Tax Map #	Parcel #	Block #	Lot #	Section
<u>32C</u>	<u>15</u>			

FOR RESUBMITTAL ONLY

Corrections ☐
Redesign ☐
No Change ☐
Non-Critical Area ☐

*Complete Only Page 1
General Project Information

Tax ID # 1-005669

Project Name (site name, subdivision name, or other) Storey's Baynet Facility

Project location/Address 3946 Oyster House Rd

City Brownes Island, MD Zip 20615

Local case number

Applicant: Last name Storey, THE First name Louis A.

Company

Application Type (check all that apply):

Building Permit ☒
Buffer Management Plan ☐
Conditional Use ☐
Consistency Report ☐
Disturbance > 5,000 sq ft ☒
Grading Permit ☒

Other ☐
Rezoning ☐
Site Plan ☒
Special Exception ☒
Subdivision ☐
Variance ☒

Local Jurisdiction Contact Information:

Last name Whitt First name Roxana

Phone # (410) 535-1600 x 2335 Response from Commission Required By _____

Fax # (410) 414-3092 Hearing date _____

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

Budget Facility

Intra-Family Transfer ☐
Grandfathered Lot ☐

Growth Allocation ☐
Buffer Exemption Area ☐

Yes ☐ > County making application

Project Type (check all that apply)

Commercial ☒
Consistency Report ☐
Industrial ☐
Institutional ☐
Mixed Use ☐
Other ☐

Recreational ☐
Redevelopment ☒
Residential ☐
Shore Erosion Control ☐
Water-Dependent Facility ☐

SITE INVENTORY (Enter acres or square feet)

	Acres	Sq Ft
IDA Area		
LDA Area	<u>1.31</u>	
RCA Area		
Total Disturbed Area	<u>1.11</u>	

Total Disturbed Area 1.11

of Lots Created

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees	<u>0</u>	<u>0</u>	Existing Impervious Surface	<u>1.18</u>	<u>51,450</u>
Created Forest/Woodland/Trees		<u>20 Acres</u>	New Impervious Surface		
Removed Forest/Woodland/Trees	<u>0</u>	<u>0</u>	Removed Impervious Surface	<u>0.39</u>	<u>16,896</u>
# <u>shrubs created</u>		<u>115 Shrubs</u>	Total Impervious Surface	<u>0.79</u>	<u>34,554</u>

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance	<u>1.00</u>		Buffer Forest Clearing	<u>0</u>	
Non-Buffer Disturbance	<u>0.11</u>		Mitigation	<u>0</u>	

Variance Type

Buffer ☒
Forest Clearing ☐
HPA Impact ☐
Impervious Surface ☒
Expanded Buffer ☐
Nontidal Wetlands ☐
Other ☒
Setback ☒
Steep Slopes ☐

Structure

Acc. Structure Addition ☐
Barn ☐
Deck ☐
Dwelling ☐
Dwelling Addition ☐
Garage ☐
Gazebo ☐
Other ☒
Patio ☐
Pool ☐
Shed ☐

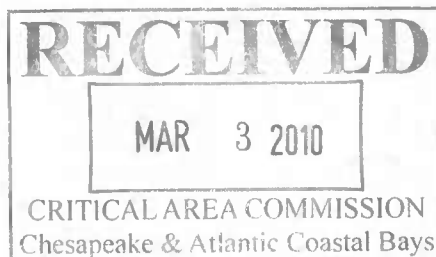
commercial parking

MITIGATION IMPLEMENTATION PLAN

SPR 06-37 ~ Stoney's Banquet Facility
3946 Oyster House Road
1ST District, Calvert County
Broomes Island, Maryland

The information below in conjunction with the attached mitigation plan by COA (dated 2/17/10) and planting plan by Lasting Impressions (LI) is submitted to address the requirements for the approval and implementation of a mitigation plan for the referenced project.

- 1) The total mitigation (TM) area required is 96,032-sf per Dr. Brownlee's e-mail dated 12/1/09.
- 2) The owner agrees to plant the area (PA) as shown on the plan by LI. This area will be bonded at the rate of \$0.50/sf planted – bond amount is \$23,230.
- 3) The property owner shall provide the completion bond for the noted landscape materials in the amount noted on the mitigation plan prior to the Board of Appeals (BOA) hearing which is to be scheduled as quickly as possible.
- 4) A fee in lieu of plantings (FIL) equal to $(TM - PA \times \$0.40/sf)$ will be paid in the following installments:
 - a) 1st payment of \$10,000 will be paid on approval of this mitigation implementation plan.
 - b) A final payment of \$9,828.80 for the remaining balance will be paid prior to the Board of Appeals (BOA) hearing.



RECEIVED JUN 1 2010

FEB 18 2010

Collinson, Oliff & Associates, Inc.

PO Box 2209
Prince Frederick, MD 20678
Phone: 410-535-3101 • 301-855-1599
Fax: 410-535-3103
Email: dkelsh@coainc.com

Memo

To: Board of Appeals

Attn: Roxanna Whitt

From: Dan Kelsh

CC: file

Date: 10/16/08
02/15/10 Revised
04/08/10 Revised



Project: Stoney's ~ Banquet Facility
COA Job #: 1-8668

Re: BOA Request Information

The attached package is submitted for review and action as summarized below. If you have any questions or require additional information, please call.

1. Critical Area Criteria Variance:

- a. Structures and development within the buffer as shown on the variance site plan including an on-shore boat bar with canopy, banquet tent on slab, storage building, landscaping & grading, well pump house, parking lot, boardwalk, concrete & brick pavers, walkways, concrete slabs, gravel & stone surfaces and three (3) pedestrian access points eight (8) feet wide. This variance request includes the reduction of required waterfront setbacks to the structures as existing on-site.

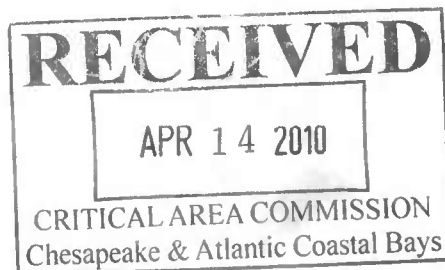
**Calvert County Board
of Appeals**

Memo

To: Roby Hurley, Critical Area Commission
From: Pam Helie, Clerk to the Board of Appeals
CC: Roxana Whitt, BOA
Date: April 13, 2010
Re: Board of Appeals Case for Review

The case set forth below is scheduled to come before the Calvert County Board of Appeals on Thursday, May 6, 2010. Please review the enclosed information and provide comments to Roxana Whitt by Friday, April 23, 2010. If you have questions, I can be reached at 410/535-1600, Extension 2559.

Case No. 08-3559(D): Louis P. Stone, III has applied (after-the-fact) for variances in the 50' Critical Area Waterfront buffer requirement for approval of development/structures within the buffer as shown on the variance site plan, including an onshore boat bar with canopy, banquet tent on slab, storage building, landscaping & grading, well/pump house, parking lot, boardwalk, concrete and brick pavers, walkways, concrete slabs, gravel & stone surfaces, and three (3) pedestrian access points 8-feet wide each. The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel15) and is zoned MC/IDA Marine Commercial/Intensely Developed Area.





**CALVERT COUNTY
DEPARTMENT OF PLANNING & ZONING**

150 Main Street
Prince Frederick, Maryland 20678
Phone: (410) 535-2348 • (301) 855-1243
Fax: (410) 414-3092

Director
Gregory A. Bowen

Board of Commissioners
Gerald W. Clark
Linda L. Kelley
Wilson H. Parran
Susan Shaw
Barbara A. Stinnett

March 17, 2010

Dan Kelsh
Collinson, Oliff and Associates, Inc
110 Main Street
Prince Frederick, MD 20678

Re: Stone Mitigation Plan

Dear Mr. Kelsh:

There appears to be some confusion as to the approval of the Stone mitigation plan that I have previously granted.

The Stone property is currently designated Limited Development Area (LDA). Stone has requested that the property be reclassified to Intensely Developed Area (IDA) and designated as a Special Buffer Management Area (SBMA). The Board of County Commissioners has approved the request and has forwarded it to the Critical Areas Commission for its approval.

The mitigation plan you have submitted on Stone's behalf is based on the assumption that the property will be reclassified from LDA to IDA and that it will be designated SBMA. The plan has been submitted on this basis with the consent of the Calvert County Department of Planning and Zoning and Critical Areas Commission staff as an accommodation to the property owner. The accommodation has been extended to reduce the amount of time between the granting of IDA and SBMA status and the presentation of the variance request to the Board of Appeals.

As you are aware, a prior variance granted by the Board of Appeals has been vacated by the Board pursuant to a court order issued by the Circuit Court for Calvert County, Maryland, in case # 04-C-09-00278AA. The order issued by the court says in part:

The matter is REMANDED to the Calvert County Board of Appeals for the following actions:

Mailing Address: 175 Main Street, Prince Frederick, Maryland 20678

Maryland Relay for Impaired Hearing or Speech 1-800-735-2258

- b. The Board of Appeals shall enter an order directing the Respondent, Louis Stone, to comply fully with Natural Resources Article 8-1808 (c)(4) and the 4:1 mitigation requirements in the Calvert County Critical Area Program Chapter V Section A.2.d.3., including preparation, submission, and obtaining approval from the County Planning and Zoning Office of a mitigation plan; and the implementation of said plan to the satisfaction of the County Planning and Zoning Offices.

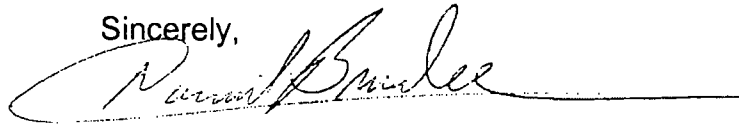
On December 1, 2009, I, submitted comments to the proposed mitigation plan to you. I began my comments by stating; "These comments pertain to a plan that will be effective *when, and not until*, the Intensely Developed Area (IDA) and Special Buffer Mitigation Area (SBMA) designations are approved as part of the County's Critical Area Program." I concluded my comments by saying, "[t]he above-mentioned variance requests can be heard once the property has received IDA and SBMA status. *At that time*, County staff will support the variances."

Consistent with the County's position throughout this process, the County will only recognize and support the current mitigation plan if and when the property has received IDA and SBMA status. As currently configured, the plan does not comply with requirements for mitigation plans concerning property with an LDA designation. As such, the mitigation plan is not satisfactory to the Department of Planning and Zoning. It therefore does not comply with the court's order cited above.

Any inference to be drawn from any communications from the Department of Planning and Zoning staff that the plan is approved for the property as it is currently classified is hereby rejected by the Department of Planning and Zoning. It was never our intent to have the plan accepted as being appropriate for a property with an LDA designation.

To the extent that I or anyone else in the Department of Planning and Zoning have approved the current plan as appropriate for the parcel with its current LDA designation that approval is hereby rescinded. We will stand by our approval of the plan as appropriate for the parcel once it has been designated IDA and SBMA.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Brownlee", written over a horizontal line.

David Brownlee

Calvert County Board of Appeals
Critical Areas Commission

From: Cook, Mary Beth [cookmb@co.cal.md.us]

Sent: Thursday, February 18, 2010 2:00 PM

To: Gallo, Kerrie

Cc: Bowen, Gregory A.; Brownlee, David C.; Hurley, Roby

Subject: Stoney's Banquet Facility

Kerrie,

The Environmental Staff and I met with Dan Kelsh and Jeannie Stone this morning to finalize the referral for variances from the Board of Appeals.

The planting plan for the mitigation and the buffer management plan have both been approved.

A check for \$10,000 for fees-in-lieu has been paid and the planting bond was set at \$23,230. Since the bond amount was just determined this morning, it was not possible for the applicant to get a letter of credit for the bond today. Ms. Stone has agreed to post the bond prior to the Board of Appeals hearing date.

The Notice of Violation and assessment of the penalty were both addressed prior to the last Board of Appeals hearing.

This case should be scheduled for the BOA April 1, 2010 hearing.

Please contact me if you have any questions.

Mary Beth Cook

Deputy Director/Zoning Officer

Calvert County Planning & Zoning

150 Main Street

Prince Frederick, MD 20678

410.535.2348

cookmb@co.cal.md.us

REPORT TO THE BOARD OF APPEALS

FROM: Roxana Whitt

REPORT DATE: November 24, 2008

HEARING DATE: December 4, 2008

CASE NO. 08-3559

APPLICANT: Louis P. Stone

PROPERTY LOCATION:

The property is located at 3946 Oyster House Road, Broomes Island, and is otherwise known as Parcel 15 of Tax Map 38C in the Land Records for Calvert County.

REQUEST:

The applicants in the subject case have applied for variances in the Critical Area and Floodplain Management Ordinance regulations for after-the-fact approval of commercial improvements to the subject property.

ZONING:

The subject property is zoned Marine Commercial (MC) and has a Limited Development Area (LDA) Critical Area overlay.

AUTHORITY OF THE BOARD OF APPEALS:

The jurisdiction of the Board of Appeals is based on Article 66B of the Annotated Code of Maryland, as amended, and Article 11-1.01.B of the Calvert County Zoning Ordinance, which provides that the Board of Appeals shall have the authority to grant variances from the Critical Area and Floodplain requirements of the Zoning Ordinance.

APPLICABLE ZONING ORDINANCE SECTIONS

ZONING:

Section 2-8.07 of the Zoning Ordinance addresses the purpose and intent of the Marine Commercial (MC) zoning district:

This Primary District is intended to provide for businesses which supply and cater to marine activities and needs.

CRITICAL AREA OVERLAY ZONING:

Section 8-1.04 of the Zoning Ordinance defines the nature, purpose and goals of the Limited Development Area (LDA) zoning overlay, and includes the following language:

Limited Development Areas (LDA) are those areas within the Critical Area District which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats, and the quality of runoff from these areas has not been substantially altered or impaired.

The purpose of the LDA is to serve as areas for low or moderate intensity development.

The following goals will guide development in the LDA:

Maintain or, if possible, improve the quality of runoff and ground water entering the Chesapeake Bay and its tributaries;

Maintain, to the extent practicable, existing areas of natural habitat; and

Accommodate additional low or moderate intensity development if this development conforms to the habitat protection criteria of Section 8-1.08; and the overall intensity of development within the LDA is not increased beyond the level established by the prevailing character as identified by density and land use currently established in the area.

CRITICAL AREA BUFFER

Section 8-1.08.D.1 of the Zoning Ordinance addresses the purpose of the Critical Area Buffer:

The purpose of the Buffer is to:

- a. Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;*
- b. Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;*
- c. Maintain an area of transitional habitat between aquatic and upland communities;*
- d. Maintain the natural environment of streams; and*
- e. Protect riparian wildlife habitat.*

Section 8-1.08.D.2 describes the Critical Area buffer:

- a. *The buffer shall consist at a minimum of the area 100 feet landward from the Mean High Water Line of tidal waters, the edge of the bank of tributary streams, and the landward edge of tidal wetlands and shall be expanded as set out in paragraph 'b' of this Section.*

Section 8-1.08.D.2.b states:

- b. *The buffer shall be expanded beyond 100 feet to include contiguous, sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments.*

CRITICAL AREA TREE COVER REQUIREMENTS:

Section 8-1.04.G.1.i addresses Critical Area tree cover:

If less than 15 percent forest cover is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent of the lot area within the Critical Area.

IMPERVIOUS SURFACE LIMITATIONS:

The limitations on impervious surface found in Section 8-1.04.G.1.f of the Calvert County Zoning Ordinance are intended to reduce stormwater runoff, which introduces land-based pollutants to the surrounding waters. LDA properties that are greater than ½ acre in size are limited to 15% of the property's area.

CRITICAL AREA VARIANCE APPROVAL CRITERIA:

In accordance with Section 11-1.01.B of the Zoning Ordinance:

A Critical Area variance shall be granted only if the applicant demonstrates, and the Board finds that:

- a. *The variance will not result in injury to the public interest; and*
- b. *Granting the variance will not adversely affect the implementation of the Comprehensive Plan; and*
- c. *The variance is the minimum adjustment necessary to afford relief from the regulations; and*

- d. *Special conditions or circumstances exist that are peculiar to the land or structure within Calvert County and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship; and*
- e. *A literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the County; and*
- f. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area; and*
- g. *The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property.*
- h. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law.*

FLOODPLAIN ZONE:

Section 4.2 of the Calvert County Floodplain Management Ordinance defines Tidal Floodplains as follows:

Tidal Floodplains consist of areas subject to coastal or tidal flooding by the 100-year flood. These areas are flooded due to high tides, hurricanes, tropical storms, and steady on-shore winds.

BASE FLOOD:

Section 2.2 of The Calvert County Floodplain Management Ordinance defines Base Flood as follows:

Base Flood - The 100-year frequency flood event as indicated in the Flood Insurance Study, as amended, the elevation of which is used for regulatory purposes in this Ordinance.

FLOOD PROTECTION ELEVATION:

Section 2.13 of The Calvert County Floodplain Management Ordinance defines Flood Protection Elevation as follows:

Flood Protection Elevation – the elevation of the base flood plus one foot freeboard.

FLOODPLAIN ELEVATION REQUIREMENTS- TIDAL FLOODPLAINS:

Section 5.2 of the Calvert County Floodplain Management Ordinance addresses elevation of new and substantially improved structures in the tidal floodplain zone:

All new or substantially improved residential and non-residential structures shall have the lowest floor elevated to or above the Flood Protection Elevation.

Section 6.5 of the Calvert County Floodplain Management Ordinance addresses elevation of utilities:

All electric utilities to the building side of the meter, both interior and exterior to the building, are regulated by this Ordinance. Distribution panel boxes must be at least 2 feet above the Flood Protection Elevation. All outlets and electrical installations, such as heat pumps, air conditioners, water heaters, furnaces, generators, distribution systems, must be installed at or above the Flood Protection Elevation.

FLOODPLAIN VARIANCE APPROVAL CRITERIA

Section 11-1.01.D of the Zoning Ordinance provides that a variance may only be granted if the criteria set forth in 11-1.01.A.2 are met, and if the Board makes findings as set forth in 11-1.01.A.3.

Section 11-1.01.A.2 states that:

A variance may only be granted if peculiar and unusual practical difficulties or unwarranted hardships exist on a parcel, and such difficulties and hardships are created by exceptional narrowness, shallowness, or shape of the parcel, by reason of exceptional topographical conditions, or by other extraordinary situations or conditions affecting the property.

Section 11-1.01.A.3 states that the Board must find that:

- a. *The variance will not result in injury to the public interest; and*
- b. *Granting the variance will not adversely affect the implementation of the Comprehensive Plan; and*

- c. *The variance is the minimum adjustment necessary to afford relief from the regulations; and*
- d. *The variance request is not based upon conditions or circumstances which are the result of actions by the applicant.*

In accordance with Section 11-1.01.D of the Zoning Ordinance, a floodplain variance may be granted only if the applicant demonstrates and the Board further finds:

- a. *a showing of good and sufficient cause; and*
- b. *a determination that failure to grant a variance would result in unwarranted hardship (other than economic) to the applicant; and*
- c. *a determination that the granting of a variance will not result in increased flood heights, increased threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local or State laws or Ordinances.*

Section 11-1.01.D further requires that:

The variance shall be the minimum necessary, considering the flood hazard, to afford relief.

The Department of Planning and Zoning shall solicit comments regarding the variance application from the Maryland Department of the Environment. Such comments shall be forwarded to, and considered by, the Board of Appeals.

FINDINGS BASED ON THE APPLICATION, SITE VISIT AND AVAILABLE DATA:

The property consists of 1.31 acres and is situated on the southeast side of Oyster House Road in Broomes Island. The property was the former home of the Warren Denton Seafood Company, which operated on site for more than 50 years and which ceased operation ~10 years ago. The applicant in this case, Mr. Stone, purchased the property from Ms. Denton in 2002. Mr. Stone owns the adjacent property, which is the home of Stoney's Seafood House restaurant.

At the time the property was purchased by Mr. Stone, the oyster house and numerous sheds were still on the property, though vacated; additionally, two large barges were positioned in Island Creek off the southeast corner of the property. The oyster house was located immediately adjacent to the waterfront and the sheds were scattered throughout the property. The oyster house and sheds were severely damaged by Hurricane Isabel, and Mr. Stone subsequently removed them, as well as a fuel tank and the barges in Island Creek.

Mr. Stone previously received a variance in the waterfront buffer requirements and special exception approval from the Board of Appeals for construction of a banquet hall tent, additions to a storage building and conversion of an existing building to a kitchen

(BOA 06-3382). The only conditions of the 2006 approval were that all permits and approvals required for construction be obtained, and that all requirements for stormwater management and requirements of the Floodplain Management Ordinance be met.

Mr. Stone commenced work on the property without benefit of site plan approval and building and grading permits. The unpermitted work includes the items that are the subject of variance requests in this case, namely a boat bar, banquet tent, storage building/area, two ponds, landscaping and associated grading, a well/pump house, parking lot, boardwalk, concrete brick pavers, walkways, concrete slabs, gravel and stone, and a geoblock wall and columns. (Note: The kitchen was added to the variance requests, but it appears that all necessary approvals for it have been obtained.)

FINDINGS RELATED TO CONSISTENCY WITH THE COMPREHENSIVE PLAN

The property is zoned Marine Commercial. This zone is intended to provide for businesses which supply and cater to marine activities and needs. Allowed uses in the Marine Commercial zone cover a wide range including antiques sales, art galleries, residences, taverns, libraries, diesel service and repair shops, manufacturing and/or assembly of watercraft, and eating establishments. The applicant proposes to use the tent on the property for banquets and parties and to use the accessory structures to support this use. The Comprehensive Plan indicates that "Calvert's commercial waterfront is one of the County's main tourism attractions" and "the County needs to be proactive in facilitating its proper and effective use." The Comprehensive Plan also identifies allowing "maximum utilization of areas zoned Marine Commercial without causing significant adverse effect on aquatic resources, visual aesthetics, or neighboring residential uses" as an Action item for implementation of the Plan.

FINDINGS RELATED TO THE CRITICAL AREA VARIANCE REQUESTS

Variances to the waterfront buffer, impervious surfaces, and tree cover requirements are requested.

The property is surrounded on three sides by Island Creek. Consequently, nearly the entire site is encompassed by the 100-foot buffer, with the exception of a narrow strip measuring 20-30 feet wide down the center. The substrate of the property consists primarily of hard-packed, crushed oyster shell resulting from years of placement of used shell around the building to maintain a parking area and work lot. This situation existed prior to Critical Area law and continues to the present. The Critical Area law also provides that continuation of any use legally in existence on the date of Critical Area Program approval is permitted (Section 8-1.07.A.). If the use has been abandoned for more than one year, then it is no longer grandfathered. While the oyster house use was abandoned and the banquet tent is a new use, the use of the impervious lot on this property does not seem to have been abandoned.

Section 8-1.04 of the Zoning Ordinance indicates that a goal in guiding development within the Critical Area's LDA zone is to maintain, to the extent practicable, existing areas of natural habitat. Natural habitat has not existed on this property in more than 50 years. Virtually the only vegetation on site is that which has been planted by Mr. Stone since 2006. With the possible exception of the southwest corner of the property, the entire property is underlain by impervious oyster shell and gravel. Without replacement of large sections of the substrate, the property is virtually entirely impervious and will not support tree cover.

The overall development proposal includes a landscape schedule for planting 2 shade trees, 18 flowering trees, 106 shrubs, 111 ornamental grasses, and various perennials in landscaped beds. Much of the landscaping is already in place, although the trees in particular appear to be of marginal success. In addition, fill dirt and sand were brought on-site to create pervious surfaces for turf installation. Impervious surfaces which previously totaled 1.18 acre now total .85 acre. The Calvert County Department of Public Works, Engineering Bureau, has provided a memorandum indicating that with the amount of existing impervious area being reduced by 28%, the Department offers no objection to the development and indicates that no additional stormwater management will be required. Section 8-1.04 of the Zoning Ordinance provides that a goal in guiding development within the Critical Area's LDA zone is to maintain or, if possible, improve the quality of runoff and ground water entering the Chesapeake Bay and its tributaries. The reduction in impervious surface and the additional plantings aid in improving the quality of runoff from this property.

FINDINGS RELATED TO THE FLOODPLAIN VARIANCE REQUESTS:

Variances to the building and utility elevation requirements are requested.

The entire property lies within the 100-year tidal floodplain. The Base Flood Elevation on the property is 6.0 feet. The majority of the property falls between elevations 2 and 4 feet. No portion of the buildable area of the property lies above the Base Flood Elevation.

The Floodplain Management Ordinance requires that the first floor of any structure >300 s.f. in size in the floodplain be elevated at least to the Flood Protection Elevation, which is 7 feet on this property. The kitchen meets flood elevation requirements, as is evidenced by the Elevation Certificate provided by COA, Inc. The kitchen was originally constructed as a storage building, but was subsequently converted to kitchen use. No action by the Board is required for this structure. The tent, shed, pump house and storage building do not meet elevation requirements. The pump house is simply a small shed built around the existing well and pump. No elevation of that structure is required. The other shed is sufficiently small (<300 s.f.) to be exempt from elevation requirements, as well. Elevation of the tent and storage building with cooler means that these structures would have entrances that are 3 to 5 feet above grade.

The storage building was built around an existing cooler that was part of the original oyster house development. A "U-shaped" addition encompasses the cooler. Elevation of the cooler is not feasible because of its original construction; elevation of the addition around the cooler is likewise not feasible. The boat bar is also not elevated. Its construction includes a boat with a shelf for seating around a portion of the outer perimeter, and a tent overhead. There is no enclosed area in the boat bar and no need for elevation of this structure. The storage building can be vented to allow flow-through of flood waters. The tent is not a permanent structure, and as constructed will allow flow-through of flood waters. Except for the kitchen, the other structures will not have the utilities elevated. Because these are not residential structures and are not anticipated to be in use during floods, the necessity of elevating the buildings and utilities is of small concern with regard to safety.

ADDITIONAL INFORMATION

Based on the requirements of Article 11-1.02 of the Zoning Ordinance, the grant of a special exception shall lapse if the proposed use or the proposed construction has not commenced within a period of two years after the effective date of the special exception. The effective date of the original special exception was January 8, 2007. Obviously, the construction has commenced, which is the reason the applicants are before the Board at this time (See Notice of Violation and Civil Citation issued by the Department of Planning and Zoning). While it makes little sense to reward unpermitted construction, it also makes little sense to suspend the special exception approval based on a determination that the construction has not commenced, particularly given that the violation charge is for unauthorized commencement of construction.

The Notice of Violation and Civil Citation do not specify Critical Area violations. As per the memorandum from the Zoning Officer (attached), the applicant in this case is required to pay a fine and post a mitigation bond before the Board can grant a variance for the unauthorized construction. The Critical Area Planner in the Department of Planning and Zoning has indicated that the amount of mitigation required will be based on disturbance to the entire property and that the applicant will be required to pay fees and/or post a bond for replanting 4 times the area of the entire property.

Finally, it is apparent to this reviewer that the subject property was incorrectly mapped at the time Critical Area legislation was adopted in Calvert County. While the adjoining Stoney's Restaurant property was designated on the Critical Area maps as exempt from the 100-foot waterfront buffer requirements, the subject property was not. A comparison of the level of development on each property suggests this was a mistake. Likewise, to designate this property as Limited Development Area (LDA) rather than Intensely Developed Area (IDA) also seems a mistake. The level of development was intense, at least by Calvert County's standards, when mapping was initiated. Other properties that received the IDA designation though much less intensely developed were the Calvert Marina on Dowell peninsula, the Calvert County Industrial Park, and the Breezy Point

Marina and Park. Within the IDA zone, there is no limit on impervious surfaces and no requirement for minimum tree planting. The previous owner of the subject property obviously did not challenge the designations assigned to the property and so they have constrained the property ever since. The proposed development in this case is consistent with IDA and buffer-exempt development, and the property owner is encouraged to seek an adjustment to the mapping.

Calvert County Board of Appeals

Memo

To: Mary Beth Cook/Zoning Officer/P&Z
David Humphreys/Planning Commission Administrator

From: Pam Helie, Clerk to the Board of Appeals

CC: Roxana Whitt

Date: 10/22/2008

Re: Board of Appeals Cases for Review


The following cases are scheduled to come before the Board of Appeals on Thursday, December 4, 2008. Please review the enclosed information and provide comments to Roxana Whitt, Board of Appeals, by Tuesday, November 25, 2008:

CASES SCHEDULED FOR 9:00 A.M.:

Case No.08-3556: William & Lynne Sneade have applied for a variance in the side setback requirements from 30' to 20' for construction of an addition to an existing detached garage. The property is located at 3340 Soper Road, Huntingtown (Tax Map 20, Parcel 207, Lot 2RR, Mary D. Reida Property) and is zoned FFD Farm and Forest District.

Case No.08-3557: Kenneth & Jean Robinson have applied for a variance (after-the-fact) in the 100' waterfront buffer requirement for construction of a shed. The property is located at 205 Leason Cove, Lusby (Tax Map 45A, Lot 22R, Section 7, Block A, Drum Point) and is zoned RD Residential District.

Case No. 08-3558: Courtney T. Camp has applied on behalf of the property owner Margaret Camp for a variance in the 100' waterfront and extended buffer requirement and for a variance in the cliff setback requirement for construction of a house, deck, porch and septic. The property is located at 3319 Bayview Drive, Chesapeake Beach (Tax Map 16A, Lots 8, 1/2-9, & 12, Willows Colony) and is zoned RD Residential District.

 ^(AFTER-THE-FACT)
Case No. 08-3559: Louis P. Stone has applied for a variance in the 100' waterfront buffer requirement for approval of structures in the buffer including an onshore boat bar, kitchen, banquet tent, storage building/area, two ponds, landscaping & grading, well/pump house, parking lot, boardwalk, concrete brick pavers, walkways, concrete slabs, gravel & stone, and a geoblock wall & columns; a variance in the 15% impervious surface requirement; a variance in the 15% tree cover requirement; a variance in the venting & elevation requirements of the Floodplain Management Ordinance as they pertain to structures and utilities for a banquet tent, kitchen, cooler/storage building, boat bar and well/pump house; and for an extension of a Special Exception granted by the Board in its Order No. 06-3382, dated January 8, 2007 to create a banquet hall. The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel 15) and is zoned MC Marine Commercial.

CASES SCHEDULED FOR 1:00 P.M.:

Case No. 08-3560: Kelley Robinson has applied on behalf of the property owner Richard DeVault for a variance in the side setback requirement from 30' to 9' and a variance in the rear setback requirement from 60' to 10' for construction of a detached garage. The property is located at 7709 Lake Shore

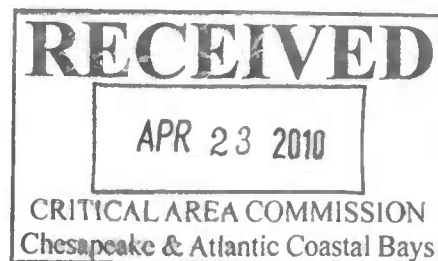


April 15, 2010

Louis P. Stone
P. O. Box 241
Dowell, MD 20629-0241

CALVERT COUNTY BOARD OF APPEALS

150 Main Street
Prince Frederick, Maryland 20678
Phone: (410) 535-2348 (301) 855-1243
Fax: (410) 414-3092



Subject: Board of Appeals Case No. 08-3559(D)
Property Located at 3946 Oyster House Road, Broomes Island 20615

Dear Applicant:

This is to notify you that the Calvert County Board of Appeals will hear the subject application for appeal on Thursday, May 6, 2010 in the Commissioners' Hearing Room, Second Floor, Courthouse, Prince Frederick, Maryland. Your case has been scheduled for the morning session, which begins at 9:00 a.m.

You are hereby notified to be present, either in person or represented by an agent or attorney, to present your case.

Please note that the sign you received when you submitted your application must be posted on the property at least ten days prior to the hearing as set forth in the attached Property Posting Instructions. Please do not remove the sign until after the hearing. The signed and dated Affidavit of Sign Posting must be returned to me on the date of the Public Hearing. Failure to present the Affidavit may result in postponement of your case. If the case is postponed, rescheduling will require an additional fee.

Also enclosed is a copy of the Notice, which was mailed to all affected property owners.

If you have any questions concerning this matter, please contact me at 410-535-1600, extension 2559; or the Board of Appeals Administrator, Roxana Whitt, at 410-535-1600, extension 2335. Calvert County services are accessible to individuals with disabilities. Maryland relay for impaired hearing or speech available statewide toll free: (800) 735-2258.

PLEASE NOTE THAT CELLPHONES ARE NOT ALLOWED IN THE COURTHOUSE.

Sincerely,

A handwritten signature in cursive script that reads "Pamela P. Helie".

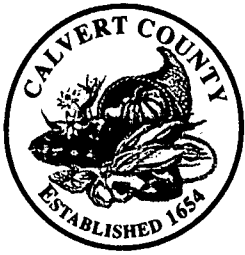
Pamela P. Helie
Clerk to the Board

CC: Sager Williams, Esquire
Dan Kelsh, COA, Inc.

Enclosures

Mailing Address: 175 Main Street, Prince Frederick, Maryland 20678

Maryland Relay for Impaired Hearing or Speech 1-800-735-2258



CALVERT COUNTY BOARD OF APPEALS

150 Main Street
Prince Frederick, Maryland 20678
Phone: (410) 535-2348 (301) 855-1243
Fax: (410) 414-3092

CALVERT COUNTY BOARD OF APPEALS PUBLIC HEARING NOTICE

April 15, 2010

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE CONSIDERED AN
AFFECTED PROPERTY OWNER IN THE SUBJECT CASE.**

NOTICE IS HEREBY GIVEN that an administrative public hearing will be held by the Calvert County Board of Appeals on **Thursday, May 6, 2010, at 9:00 A.M.** in the County Commissioners' Hearing Room, Second Floor, Courthouse, 175 Main St., Prince Frederick, MD, on the following matter:

Case No. 08-3559(D): Louis P. Stone, III has applied (after-the-fact) for variances in the 50' Critical Area Waterfront buffer requirement for approval of development/structures within the buffer as shown on the variance site plan, including an onshore boat bar with canopy, banquet tent on slab, storage building, landscaping & grading, well/pump house, parking lot, boardwalk, concrete and brick pavers, walkways, concrete slabs, gravel & stone surfaces, and three (3) pedestrian access points 8-feet wide each. The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel15) and is zoned MC/IDA Marine Commercial/Intensely Developed Area.

The file for this case is available for review in the Department of Planning and Zoning, County Services Plaza, 150 Main St., Prince Frederick, MD, weekdays from 8:30 a.m. - 4:30 p.m. Criteria for variance approval, which can be found in Article 11 of the Calvert County Zoning Ordinance, are also available for review on the internet at <http://www.co.cal.md.us/government/departments/planning/documents>.

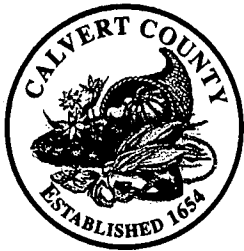
Affected property owners may elect to participate as a party in accordance with applicable law or alternatively affected property owners and other members of the public may request the opportunity to provide public comment at the hearing. Written comments should be addressed to Pamela Helie, Clerk to the Board of Appeals, 150 Main Street, Prince Frederick, MD 20678; faxed to 410-414-3092; or emailed to heliapp@co.cal.md.us. Copies of written comments will be provided to the Board if they are received by 2:00 p.m. the day before the hearing.

If you have any questions regarding this case, please contact the Board Clerk at 410-535-1600, ext. 2559; or the Board of Appeals Administrator, Roxana Whitt, at 410-535-1600, ext. 2335.

***PLEASE NOTE THAT CELLPHONES
ARE NOT ALLOWED IN THE COURTHOUSE***

Mailing Address: 175 Main Street, Prince Frederick, Maryland 20678

Maryland Relay for Impaired Hearing or Speech 1-800-735-2258

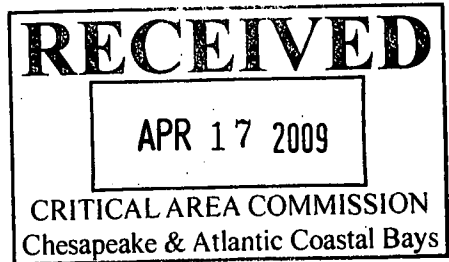


**CALVERT COUNTY
BOARD OF APPEALS**

150 Main Street
Prince Frederick, Maryland 20678
Phone: (410) 535-2348 (301) 855-1243
Fax: (410) 414-3092

April 16, 2009

Margaret McHale, Chair
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1801 West Street, Suite 100
Annapolis, Maryland 21401



Subject: Board of Appeals Case No. 08-3559(B)
Louis P. Stone, Property Owner
Circuit Court Civil Action No. 04-C-09-000278

Dear Ms. McHale:

Copies of all documents included in the record for Board of Appeals Case No. 08-3559(B) were provided to the Clerk of the Circuit Court, Calvert County today. These documents will become part of the record for Circuit Court Civil Action No. 04-C-09-000278.

Enclosed for your information, is an index summarizing the documents that were provided to the Court. If you have questions or need further information, I can be reached at (410)535-1600, extension 2559.

Sincerely,

Pamela P. Helie
Clerk to the Board of Appeals

Enclosure

Cc: Mr. Michael Reber, Chairman BOA
Carlton Green, Attorney for BOA
Louis P. & Eugenia Stone
Douglas F. Gansler, Esquire
Paul J. Cucuzzella, Esquire
Marianne E. Dise, Esquire
Greg Bowen, Director P&Z
Emanuel Demedis, Calvert County Attorney

Amy Welch, Esquire
Laurence Cumberland, Esquire
Roby Hurley, CAC
Dan Kelsh, COA
Mary Beth Cook, Zoning Officer

Mailing Address: 175 Main Street, Prince Frederick, Maryland 20678

Maryland Relay for Impaired Hearing or Speech 1-800-735-2258

**CERTIFIED COPY OF RECORD FOR
BOARD OF APPEALS CASE NO. 08-3559(B)
Margaret McHale, Chair, Critical Area Commission
for the Chesapeake and Atlantic Coastal Bays, Petitioner
Louis P. Stone Applicant/Property Owner
Civil Action No. 04-C-09-000278**

INDEX:

A. Orders:

1. Board of Appeals Order No. 08-3559(B) Entered January 29, 2009(from December 4, 2008 & January 8, 2009Public Hearings)
2. Board of Appeals Order No. 08-3559(A) Entered December 17, 2008 (from December 4, 2008 Public Hearing)

B. Transcripts:

1. Transcript of December 4, 2008 Public Hearing for BOA Case No. 08-3559(B)
2. Transcript of January 8, 2009 Public Hearing for BOA Case No. 08-3559 (A) & (B)

C. Exhibits Submitted by the Applicant:

At the December 4, 2008 Public Hearing:

1. Application to the Board of Appeals
2. Plat Submitted With Application
3. Stormwater Management Plan
4. Revised Plat With Health Department Approval
5. Denton's Oyster House, 3946 Oyster House Road, Special Exception & Variance Plan for Louis P. Stone, III, dated October 2006
6. Denton's Oyster House, 3946, Oyster House Road, Special Exception & Variance Plan for Louis P. Stone, III, dated October 2006
7. Stoney's Banquet Facility, 3946 Oyster House Road, Site, Layout & Landscape Plan for Louis P. Stone, III, last dated 10/16/08

At the January 8, 2009 Public Hearing:

8. Stoney's Banquet Facility, Site, Layout & Landscape Plan, Approved 12/08/08 by DJK, Sheet No. 2, Case No. SPR 06-37
9. Natural Resources Article 8-1807, Pages 296-303

D. Staff Exhibits:

1. Staff Report, prepared by Roxana Whitt, Board of Appeals Administrator
2. Memo from Mary Beth Cook, Zoning Officer, to Roxana Whitt, dated November 25, 2008

E. Planning & Zoning Exhibits:

1. Letter dated July 2, 2008 to the Calvert County Board of Appeals, c/o Department of Planning and Zoning, from Marianne E. Dise, Assistant Attorney General, Principal Counsel, Critical Area

**CERTIFIED COPY OF RECORD FOR
BOARD OF APPEALS CASE NO. 08-3559(B)
Margaret McHale, Chair, Critical Area Commission
for the Chesapeake and Atlantic Coastal Bays, Petitioner
Louis P. Stone Applicant/Property Owner
Civil Action No. 04-C-09-000278**

INDEX (Continued):

Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401; RE: Notice of Important Changes to Law RE: Critical Area Variances

2. Letter dated December 22, 2008 to Mr. Dan Kelsh, COA, from Mary Beth Cook, Calvert County Zoning Officer, Department of Planning and Zoning, 150 Main Street, Prince Frederick, MD 20678, RE: Stoney's Banquet Facility, SPR #06-37, BOA 08-3559

F. Mailing Notices:

1. Letter to Applicant dated November 7, 2008 for December 4, 2008 Public Hearing
2. Notice to Applicant/Affected Property Owners dated November 7, 2008 for December 4, 2008 Public Hearing

G. Correspondence:

1. Letter dated November 26, 2008 from Pam Helie, Clerk to the Board of Appeals, to Mr. Tame Dilnesahu, MDE, Water Management Administration, Wetlands & Waterway Programs
2. Letter dated December 9, 2008 from Pam Helie, Clerk to the Board of Appeals, to Louis P. Stone, III, RE: Action by Board at December 4, 2008 Hearing

H. Other Items:

1. Affidavit of Sign Posting for Case No. 08-3559
2. Notice of Violation Dated June 4, 2008 to Louis P. Stone, III for property located at 3946 Oyster House Road, Broomes Island, MD 20615
3. Civil Citation, Calvert County Zoning Ordinance, Dated July 14, 2008 to Louis P. Stone, III for property located at 3946 Oyster House Road, Broomes Island, MD 20615

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CALVERT COUNTY BOARD OF APPEALS

6

JANUARY 8, 2009

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RE: LOUIS P. STONE CASE NO. 08-3559

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For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

BOARD MEMBERS PRESENT

Michael Reber, Chairman

Michael Redshaw, Member

Lisa Sanders, Member

Carlton Green, Board Attorney

Roxana Whitt, Staff to the Board

Pam Helie, Clerk to the Board

Mary Beth Cook, Zoning Officer

Davie Brownlee, Environmental Planner

Kerry Gallo, Critical Area Commission Representative

Roby Hurley, Critical Area Commission Representative

Applicant's Representatives:

Amy Welch, Esq., Attorney for the Applicants

Eugenia Stone, Applicant

Dan Kelsh, Collinson, Oliff and Associates, Inc.

P R O C E E D I N G S

- - - - -

CHAIRMAN REBER: All right, we're back in session. We'll call the last case of the morning, which is Case Number 08-3559. Louis P. Stone has applied (after-the-fact) for a variance in the 100 foot waterfront buffer requirement for approval of structures in the buffer, including an onshore boat bar, two ponds, landscaping and grading, well/pump house, parking lot, a boardwalk, concrete brick pavers, walkways, concrete slabs, gravel and stone, and a geoblock wall and columns; a variance in the 15 percent impervious surface requirement; a variance in the 15 percent tree cover requirement; a variance in the venting and elevation requirements of the Floodplain Management Ordinance as they pertain to the structures and utilities for a banquet tent, kitchen, cooler/storage building, boat bar and well/pump house.

The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel 15) and is zoned MC or Marine Commercial.

A little bit of background on this. This was

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1 deferred from last month for a site visit to allow also
2 time for the applicant to review the project with
3 Planning and Zoning, to ensure that all requirements for
4 an after-the-fact variance have been met, including
5 providing a mitigation plan.

6 Is there anything additional we need to put
7 into the record?

8 MS. HELIE: (Inaudible).

9 MS. WELCH: Do you want to -- we may have one.

10 CHAIRMAN: Yeah.

11 **(Witnesses sworn.)**

12 MS. HELIE: If you could please identify
13 yourselves for the record?

14 MS. WELCH: Good morning, Amy Welch on behalf
15 of the applicants, Jeanie and Phil Stone. I'm
16 accompanied today by Jeannie who is seated to my right
17 and your left and Dan Kelsh from COA who is seated to my
18 left, your right.

19 I do believe that we have one additional
20 exhibit that's going to be going in and that is the most
21 recent plan that's been submitted.

22 CHAIRMAN: Ma'am, I didn't get your last name,

1 I'm sorry.

2 MS. WELCH: Welch.

3 CHAIRMAN: Welch, thank you.

4 MS. HELIE: This will be your Exhibit 8 then.

5 Do you just have one copy?

6 MR. KELSH: I have smaller versions in case
7 that helps at all. It's the same thing.

8 CHAIRMAN: All right. The first issue that we
9 must address then is the requirement for you to meet with
10 Planning and Zoning and ensuring that all requirements
11 for the after-the-fact variance have been met. Mainly,
12 we're talking about the mitigation plan. Where do we
13 stand with the mitigation plan?

14 MS. WELCH: Dan, do you want to address that?

15 MR. KELSH: Yes. As noted at the last hearing,
16 we were proposing our site plan as put up on the board as
17 our mitigation plan. We got a reply back from Planning
18 and Zoning that that was not acceptable, yet we needed to
19 submit a mitigation plan and bonding for the entire
20 disturbed area on the lot.

21 I did a -- the calculations for that, and in
22 doing that, it was about a \$50,000 amount for a bond.

1 For reasons that the attorney will address, we weren't
2 convinced that that was really an accurate portrayal of
3 what the ordinances require, so we made a proposal back
4 to Planning and Zoning, which was rejected, and they came
5 back -- I'm sorry, I mis-spoke. Earlier, the computation
6 that I had done resulted in a \$30,000 bond. They
7 rejected that. We submitted a different proposal. They
8 rejected it and came back with some clarifications which
9 raised the bond to a \$50,000 bond.

10 So, we've tried to -- even though we don't feel
11 that it's necessarily required, we tried to accomplish
12 something, to have a meeting of the minds, and it hasn't
13 worked out as of this morning.

14 CHAIRMAN: All right. Ms. Welch, do you want
15 to --

16 MS. WELCH: If I may.

17 CHAIRMAN: You may.

18 MS. WELCH: I think that brings it back to
19 where I get re-involved in this situation and, quite
20 candidly, when we left here last time, it was, I think,
21 the hope of I know my office, COA and the Stones that
22 something would be worked out just so that we could move

1 forward with this entire project. Unfortunately, as you
2 heard Mr. Kelsh represent, that hasn't occurred. So, I
3 came back in to determine, okay, is this mitigation
4 really something that's required before the Board can act
5 upon this variance, and our position today before the
6 Board is that it's not. Although we were hoping that
7 that may be something we'd be able to work out just to
8 make things easier.

9 As far as the law is concerned and the legality
10 of the situation, our argument before you today is that
11 that's not, in fact, required for the Board to act on the
12 variances that have been requested. And if I may be
13 heard on that briefly.

14 It's my understanding -- I was present last
15 time. Mr. Cumberland, obviously, was here formally
16 representing the Stones in this matter and he,
17 unfortunately, was already previously scheduled to be
18 elsewhere this morning. But I was here and it's my
19 understanding that the argument that's being made as far
20 as the requirement of mitigation is under the new Natural
21 Resources 8-1808 statute. While I wasn't intending on
22 this really being an exhibit because it's the law, I

1 don't know if you wanted it marked as such, but I do have
2 copies in case everyone wanted to be able to refer to
3 what it is that I'm referring to. I don't know.

4 MS. WHITT: That would probably be helpful.

5 MS. HELIE: That would be your Exhibit 9.

6 **(Whereupon, there was a brief pause in the**
7 **proceedings.)**

8 MS. WELCH: What you're going to see is that on
9 the second page, which is actually the third page of the
10 code that deals with this, at the bottom, it's page 299,
11 and it's -- about halfway through that page you see
12 number 15, and what that states is administrative
13 enforcement procedures in accordance with due process
14 principles, including notice and opportunity to be heard
15 in establishing. And you go down and you see that you
16 have to meet certain requirements of that. It also
17 refers you to a second part of this particular code,
18 which says that a permit approval variance or special
19 exception cannot be issued unless the administrative
20 civil and criminal penalties have been paid and a
21 restoration or mitigation plan has been prepared.

22 The problem that we see with this controlling

1 what's before the Board today is that if you step back
2 from looking at number 15 and what's on page 300 and go
3 back to what precedes that in the law, and that is
4 immediately on page 298 is C(1)(I), and that's about a
5 third of the way down, it says that local jurisdictions
6 have to apply these as minimum standards for program
7 sufficient to meet the goals of the Critical Area
8 Program.

9 If you look below that at the three little
10 (i)s, it says at a minimum, a program shall have all of
11 the following elements, including -- and that's where you
12 come to 15 where they say this is now going to be a
13 requirement that you need to apply to your local zoning
14 programs. As we sit here today, while there has been
15 memorandum issued, I believe, in the Department of
16 Planning and Zoning, I believe as a result of this
17 particular case, other than that, there really hasn't
18 been any changes to our local zoning ordinance that
19 includes these particular sections that say that this is
20 going to be applicable and this is how we're going about
21 applying this.

22 And I would mention that this particular law

1 went into effect July 1st of 2008. Certainly the issues
2 that we're applying for a variance for existed prior to
3 this law going into effect. In fact, the violations that
4 were issued were issued in June of 2008 in this
5 particular case, prior to this becoming a requirement to
6 getting a variance.

7 In addition to that, if you go back to the very
8 beginning of this statute, the real purpose in the
9 statute -- and it's been indicated in its title Program
10 Development, Implementation and Approval, which means
11 these are the requirements. And you can see, the very
12 first thing that's stated is it is the intent of the
13 subtitle that each local jurisdiction shall have primary
14 responsibility for developing and implementing a program
15 subject to review and approval by the Commission.

16 So, what the statute's really saying is, look,
17 we want changes to our critical area laws, local
18 jurisdictions need to make changes to their zoning
19 ordinances if they have critical area laws in place and
20 they need to, at a minimum, address these things that
21 we've set forth. And you have to implement this program,
22 not so much that the local jurisdiction can just step in

1 and start saying, well, these are the things that are
2 going to apply and they're going to effect what's pending
3 before the Board of Appeals in this case.

4 In addition to that, I would point out -- and I
5 think this is really critical that number 15 says
6 specifically, in accordance with due process principles,
7 including notice and an opportunity to be heard. The
8 Stones in this situation, I believe it was part of the
9 application packet, have been charged with violations of
10 Article 4 of the local zoning ordinance, not violations
11 of critical area laws. So, certainly, they haven't been
12 put on any formal notice as to what violations were to be
13 in accordance with this particular section, nor have they
14 been given an opportunity to be heard on this, because
15 without formal notice, nothing triggers an opportunity to
16 be heard and to go before the appropriate body to say I
17 think this is appropriate, I don't think this is
18 appropriate.

19 In addition, you will see language used
20 throughout 8-1808 that says for violation of this
21 subtitle, for violations under this subtitle. And really
22 what the Stones are here to request a variance for,

1 again, what the violations were issued for. The
2 violations that they have received were issued for not
3 obtaining building permits. The maximum fine, as
4 indicated on those violations, is \$500. That's been
5 paid. While there's been some informal conversation
6 about the fact that there is believed to be some critical
7 area violations out there, no formal notice has been
8 given. So, certainly, what they're before the Board
9 today, these variances, are not violations of the same --
10 are not the same things that they've been cited for
11 violations of. So, again, we'd argue that 8-1808 does
12 not apply to this case.

13 I would think that if the Department of
14 Planning and Zoning says, well, you know, they're out
15 there and that's our intent that it would be extremely
16 prejudicial at this point in time to say that -- as we
17 stand here for the second hearing on this variance, that
18 there's going to be additional violations that are going
19 to require mitigation. Again, they haven't received any
20 formal notice of violations of this subtitle, and when
21 they say this subtitle, they're referring to the 1800s of
22 the Natural Resources Article, which is the critical

1 areas law specifically, just to clarify that.

2 The next issue that we have with this
3 particular part of requirement that's now being mentioned
4 of mitigation, is that when you look at mitigation as
5 it's used in the 8-1808 statute and without our entire
6 zoning ordinance, you see it referred to as mitigation
7 for cutting and clearing of trees, mitigation for adding
8 impervious surface. And when you look at mitigation, and
9 even as it's referenced, when -- and, again, it's a
10 little confusing, but page 300 of the 8-1808. If you
11 look at number 4 at the very top, it says, the cost of
12 restoration of the resource affected by the violation and
13 mitigation for damage to that resource.

14 In this particular situation, we've heard
15 nothing about damage to the resource and, certainly, I
16 expect from your site plan visit, you'll see -- or not
17 site plan visit, the site visit rather, you'll see that
18 there's not damage to this resource. I mean, it's a
19 hard-packed oyster shell surface. What's been added is
20 an added impervious surface. It's not removal or cutting
21 of trees. The environment has not been damaged by the
22 project the Stones have undertaken down there. And,

1 certainly, it makes it difficult then to determine
2 mitigation for that because mitigation, in its essence,
3 means that you're doing something to repair damage that's
4 been done.

5 If anything, the impervious surface area has
6 decreased greatly and that -- I think Mr. Kelsh will
7 probably address that a little bit later, but the new
8 plan that was admitted as our Exhibit 8 indicates that
9 under -- taking into consideration the new lot coverage
10 definition, if we're going to be talking about that part
11 of the law, actually lowers the amount of impervious
12 surface at the site to about 50 percent, 52.7 percent.
13 So, certainly they've improved the impervious surface
14 area, they've improved the run-off. They haven't removed
15 anything. So, the requirement of mitigation becomes
16 impractical, if not illegal, in this particular
17 situation. And, certainly, the issue of bonding
18 piggybacks off the issue of mitigation. You wouldn't
19 have to post a bond if you weren't required to come into
20 compliance with the mitigation section.

21 The last thing I would point out is if, for
22 some reason, the Board believes that 8-1808 applies in

1 this case, which I, again, argue it doesn't and there's
2 no mitigation that needs to be completed here, I hate to
3 make things more complicated, but 8-1808(D) sets forth
4 those things that would have to be proven by the Stones
5 in order to be granted a variance, all of which are the
6 same things that this Board considered and found applied
7 in 2006 when the Stones were before you.

8 So, certainly, when they were here requesting
9 the special exception and the variance for the large
10 parts of this project, it was found by the Board that all
11 of the conditions that would apply to a variance being
12 granted now, in fact, existed at the time in 2006. I
13 don't think that that would need to be overcome again.
14 Again, even if the Board found that 8-1808 applied, that
15 we've established what needs to be established in order
16 for the variances to be granted by this Board.
17 Certainly, I'd be happy to answer any questions that may
18 go along with that.

19 CHAIRMAN: Mr. Green, do you have any comments?

20 MR. GREEN: Are you talking the position at
21 this point that what's been done is not in violation of
22 any of the critical area legislation?

1 MS. WELCH: Well, that's not I think the
2 argument behind why the mitigation doesn't apply. I
3 would say that, yes, there has been no violations in the
4 critical areas in this particular situation.

5 MS. SANDERS: And that's based on the notices
6 of violation that were issued back in June?

7 MS. WELCH: That's correct. The only thing
8 that was violated were the Article 4 building permit.

9 CHAIRMAN: The underlying request for
10 mitigation, if I understand what this site was, it was an
11 oyster house to begin with and that a lot of the area
12 under the site itself was compacted oyster shells from
13 the operation of the oyster house.

14 MS. WELCH: All of the area.

15 CHAIRMAN: That was impervious surface to begin
16 with.

17 MS. WELCH: That's correct.

18 CHAIRMAN: And there really weren't any trees
19 on it at all.

20 MS. WELCH: That's correct. And if you refer
21 to the 2006 hearing and the findings of fact, it
22 specifically states that the ground consists of hard-

1 packed crushed oyster shell, which was covered with
2 washed stone, and number five of the finding fact says
3 that no vegetation currently exists on the site and it's
4 not currently functioning at the buffer area, and that
5 was a finding of fact as a result of the 2006 hearing.

6 CHAIRMAN: Was there any other change, for
7 example, did the area get enlarged from what it was in
8 2006 or did it stay the same?

9 MS. WELCH: The area stayed the same.

10 CHAIRMAN: Okay. So, in terms of the
11 impervious surface that was there to begin with in
12 2006 --

13 MS. WELCH: That's correct.

14 CHAIRMAN: -- before this act took place. And
15 according to the 2006 transcript or the order you just
16 read, there wasn't any vegetation at all on this
17 property.

18 MS. WELCH: That's correct.

19 CHAIRMAN: So, the mitigation that you're being
20 asked to perform, what's it for?

21 MS. WELCH: That's part of my argument. I
22 really don't know.

1 CHAIRMAN: Well --

2 MS. WELCH: I really don't know. The only
3 thing -- and maybe Mr. Kelsh can address this a little
4 bit more directly, part of it is the impervious surface
5 area, I believe, and part of it is an afforestation area,
6 which I think because of the variances that were granted
7 in 2006, and that was before the Board at that time,
8 wouldn't be applied in this particular case.

9 Dan, if you have --

10 MR. KELSH: Let me just acknowledge, I think we
11 talked about it last time, this is just a very unique
12 situation related to the ordinance, to the new law and to
13 this particular piece of property. So, it's the
14 difficulty, I think, the county had in initially trying
15 to establish that we needed a mitigation plan, it's the
16 difficulty I had in trying to come up with what to
17 mitigate. Because what happens in the ordinance right
18 now, what you have to mitigate is when you cut trees down
19 and when you increase impervious area. And as you just
20 noted, there were no trees to cut down, so none have been
21 cut down and, actually, the work that occurred decreased
22 the amount of impervious area on the property. So, from

1 a site planning standpoint, for those two reasons, I
2 would say there's no mitigation.

3 When I got to John Schwartz's email of
4 December 10th, which was right after the previous
5 hearing, he listed a priority of -- a priority for
6 mitigation. The first one was removal of items. That's
7 not the exact wording. I can get that for you.

8 So, the only mitigation I could come up with is
9 that you would remove the tents, I guess, and the boat
10 perhaps, and that the storage building itself and the
11 impervious slabs would remain there. So, we could do a
12 bond for that. It just doesn't seem to make any sense.
13 So, that's the difficulty that we're having right now.

14 MS. SANDERS: What I don't understand is why
15 would you remove the tent and the boat when that was
16 approved in the 2006 order?

17 MR. KELSH: Because I'm just trying to find a
18 place in the middle to meet somewhere to get past the
19 sticking points so that you all can do your job and I can
20 do mine.

21 CHAIRMAN: Let me redirect this here for a
22 second, if I might, and back up to the initial question

1 as to whether or not -- we're dealing with after-the-fact
2 variance requests here, and in doing so, there is a new
3 State law which directs how we shall approach those. And
4 we have an open question here as to whether or not we can
5 even hear these variances.

6 MS. WHITT: Well, I think what they have put
7 forward to you is whether that applies, and I think
8 that's the very first thing that you have to decide, is
9 whether it does apply, based on the arguments proffered
10 by their attorney. So, I don't think that you can move
11 very much further forward in this discussion until you
12 decide that.

13 CHAIRMAN: Yeah, that's where I am. And I'm
14 going to turn to Mr. Green and -- you know, I want to
15 talk to some things about grandfathering and others, but
16 I want to have -- I'd like to have input not only from
17 the applicant here, but I'd like to have critical area
18 input and county input before -- only narrowly related to
19 this subject, if we might, because otherwise we might be
20 wasting everybody's time.

21 So, Ms. Welch, if you could redirect your
22 comments to that or if you feel you've covered it

1 sufficiently, we'll move on and get some comments from
2 both Critical Areas and the county.

3 MS. WELCH: I'd appreciate it. Again, just to
4 kind of summarize what I was saying, for the first reason
5 that 8-1808 was enacted after the violations cited in
6 this particular situation and for the simple fact that it
7 directs the county to develop programs which has not yet
8 occurred. Again, the Stones have not been cited with a
9 violation of the critical area laws, and I think it would
10 be extremely prejudicial and unfair to them if today the
11 county were to stand up and say, well, we're going to be
12 citing them for that. This is the second hearing we've
13 had before the Board. As we sit here today, it has not
14 occurred. What they were cited with, the fine's been
15 paid, it's been taken care of.

16 So, for those reasons along with, again, the
17 additional fact that since those articles that they were
18 cited with a violation of are not the same that would
19 require 8-1808 to be applied, that we don't fall under
20 the requirements for a variance under number 15 under
21 C(1)(i). So, this would not be applied to this
22 particular situation based on those reasons.

1 CHAIRMAN: All right, thank you. Let's see, in
2 terms of how we're going to do this, Mr. Green, would you
3 prefer to ask any questions of Ms. Welch at this time or
4 shall we proceed with input from the county?

5 MR. GREEN: I'd like to hear the input from the
6 county and the Critical Area Commission.

7 CHAIRMAN: All right. Then what we're going to
8 do, to be consistent with the way we hold our hearings,
9 is we will declare this as part of the open hearing
10 process. I would like -- normally, we ask who would like
11 to speak. We would very much like to hear a
12 representative from the county at this time and then
13 somebody from the Critical Area Commission weigh in on
14 this specific question, if you would, please.

15 Mary Beth, would you like to come forward and
16 be sworn in? Thank you.

17 (Witness sworn.)

18 MS. HELIE: For the record, please identify
19 yourself by stating your name, address and occupation.

20 MS. COOK: Mary Beth Cook at 150 Main Street.
21 I am the Zoning Officer and Deputy Director of Planning
22 and Zoning.

1 CHAIRMAN: Welcome back.

2 MS. COOK: Thanks. I guess I would like to
3 start with a letter that we received from the Office of
4 the Attorney General with the Critical Area Commission,
5 reading from that, "A local jurisdiction may not grant a
6 variance for unpermitted development activity unless the
7 person seeking the variance has fully paid all penalties
8 imposed by the local government, has prepared a
9 mitigation or restoration plan, and has performed, which
10 we're considering bonding, the mitigation required for
11 the violation." That has not occurred.

12 I'll go back to the issue that they're bringing
13 up about the notice of violation. When it was found that
14 unpermitted work had been done, a notice of violation was
15 done, which stated that work was done without a permit.
16 That's why Section 4 was quoted. It's during the permit
17 review process that it would be determined that it's in
18 the critical area and that other violations have
19 occurred. It's not our policy to go back and re-violate
20 and do another notice of violation. We consider that to
21 be a blanket covered by anything that would be found
22 under the review process.

1 They were, as a matter of fact, in the middle
2 of the site plan review process when it was found out
3 that they did the unpermitted work and there had been
4 memos done during that site plan process telling them
5 that they must comply with all critical area regulations.

6 In addition, our notice of violation is handled
7 by the Code Enforcement Department. They are not
8 environmental planners. So, it's not -- their
9 responsibility -- they haven't been, necessarily, trained
10 in critical area law, so that when they went out to do
11 the violation, it was simply that there had not been a
12 permit for the construction done and, as I said, then an
13 environmental reviewer reviews it and determines what
14 would be required under critical area law.

15 Also, we had been instructed shortly after the
16 critical area law in July that it was effective
17 immediately and that we then did a memo -- and I don't
18 think I have it with me today -- a policy statement that
19 went out to all the engineers and surveyors stating that
20 there was a new critical area law, that if there was an
21 after-the-fact variance once the notice of violation was
22 issued, the penalty must be paid, a mitigation plan must

1 be reviewed, approved and performed, which we're
2 considering to be bonded. And that went out sometime in
3 August.

4 So, we do have a policy in effect. We are
5 rewriting Section 8 of the ordinance. That takes time.
6 And the Critical Area Commission is working with us to do
7 the review of that. But in the meantime, we did do a
8 policy statement which went out stating that we had to do
9 this effective immediately. But while the ordinance is
10 being changed, we at least have a written policy in
11 effect.

12 MS. SANDERS: How do you answer the question,
13 though, about mitigation, whether a plan -- a mitigation
14 plan is necessary when there was no actual removal of
15 vegetation or any increase in the impervious surface?

16 MS. COOK: I believe -- and I didn't bring an
17 ordinance with me today, we're trying to get one quickly
18 -- oh, Dave has one. Grading is also included in
19 mitigation requirements and grading was done on site.

20 CHAIRMAN: Now, a fine was paid at some point
21 in this process?

22 MS. COOK: Yes.

1 CHAIRMAN: So, that is not outstanding. What
2 is outstanding is the mitigation portion?

3 MS. COOK: That's correct.

4 CHAIRMAN: Okay. Board members, any questions?

5 MS. WHITT: I have a question for Ms. Cook.

6 CHAIRMAN: Please.

7 MS. WHITT: The letter that you had from
8 Critical Area Commission, the very first thing you talked
9 about.

10 MS. COOK: Yes.

11 MS. WHITT: I believe it's the last paragraph
12 of that letter that has always concerned me a little bit.
13 Can you read that, please, for the Board?

14 MS. COOK: Sure. This letter is not a formal
15 opinion of the Attorney General, nor does this summary
16 purport to include all provisions of the 2008 law, which
17 may affect your practice and procedures. However, it is
18 the view of this office that any after-the-fact variance
19 issued after July 1st, 2008, without proof of full
20 satisfaction of fines and mitigation for the violation is
21 of no legal effect.

22 MS. SANDERS: So, it's not even a formal

1 opinion of the Attorney General. That's from the
2 Critical Area Commission, not from --

3 MS. COOK: The letterhead is the State of
4 Maryland Office of the Attorney General.

5 MS. SANDERS: That last paragraph just stated
6 this is not a formal opinion of the Attorney General.

7 CHAIRMAN: And who signed that letter?

8 MS. COOK: Mary Ann Dise, who is the Assistant
9 Attorney General.

10 MS. WHITT: And I would like to get a copy of
11 that entered into the record since that's being used for
12 discussion purposes, and I think it is pertinent to what
13 we're doing. I think we need to get a copy of that in
14 the record.

15 UNIDENTIFIED MALE: Well, we've seen that
16 before.

17 MS. WHITT: You have, but there isn't one in
18 the record at this point. But you have seen it -- I sent
19 it out to you and to your attorney, but I think it
20 probably needs to be in the record for this case. And
21 I'll make sure it gets in there if Ms. Helie will note
22 it. I'll put it in as a staff exhibit.

1 CHAIRMAN: Yes, thank you. We'll do that. All
2 right.

3 MR. REDSHAW: I have a question. How do you
4 determine what the standards are for any required
5 mitigation? Is there a formal set of standards?

6 MS. COOK: Yes, the Calvert County Zoning
7 Ordinance Section 8 lays out what is required for
8 mitigation.

9 MR. REDSHAW: And in this what's the specific
10 section that you're relying on?

11 MS. COOK: Can we swear David in and have him
12 speak to that, please?

13 CHAIRMAN: Yes, please.

14 **(Witness sworn.)**

15 MS. HELIE: Please identify yourself for the
16 record by stating your name, address and occupation.

17 MR. BROWNLEE: David Brownlee, Department of
18 Planning and Zoning, Principal Environmental Planner.

19 CHAIRMAN: Thank you.

20 MR. BROWNLEE: Section 8-109 of the County
21 Zoning Ordinance is fines and penalties. Replanting to
22 correct the violation shall be calculated at the rate of

1 four square feet to one square foot of the area cleared
2 and graded or cut in violation of the provisions of this
3 article.

4 MS. COOK: So, it includes grading.

5 MR. BROWNLEE: It includes grading.

6 CHAIRMAN: It includes grading, okay.

7 MR. REDSHAW: Now, is that the specific action
8 that triggers the mitigation, is only the grading?

9 MS. COOK: It could be clearing, grading, it
10 could be --

11 MR. BROWNLEE: Cutting or (inaudible).

12 MR. REDSHAW: But in this instance, is it just
13 the grading?

14 MS. COOK: Yes.

15 MR. BROWNLEE: Yes.

16 MR. REDSHAW: And assuming for just a second
17 how you analyze this thing, is it -- suppose it was just
18 oyster shells there and what you did was to simply re-
19 grade the oyster shells, what -- why would that require a
20 mitigation?

21 CHAIRMAN: It was done without permits.

22 MS. SANDERS: Hypothetically just moving the

1 oyster shells around, would they have needed a permit for
2 that?

3 MR. BROWNLEE: Any act by which soil -- grading
4 -- the definition of grading is any act by which soil is
5 cleared, stripped, stockpiled, excavated, scarified,
6 filled or any combination thereof.

7 MS. COOK: They brought topsoil in.

8 MR. REDSHAW: Well, they brought topsoil in and
9 placed it on top, that would then be considered grading,
10 correct?

11 MR. BROWNLEE: Actually, the area they brought
12 the topsoil in and planted grass, we could have
13 considered that as grading, but we didn't because they
14 were actually improving that area. So, we did not
15 include that in our area of violation. What we did
16 include in violation was all the buildings that -- the
17 construction that they did outside of that area that they
18 planted in grass. We did not include that grassed area.

19 MS. WHITT: Did they grade for that
20 construction?

21 MR. BROWNLEE: Yeah, they had to -- the fill,
22 they had to put in footers, they would have to have

1 filled that with concrete. That would have been filled.

2 MS. SANDERS: Wouldn't that have been covered
3 by the '06 variance that they already had for those
4 buildings?

5 MR. BROWNLEE: Not if they did it without a
6 permit. They did it without a permit is the violation.
7 They didn't come in for any permits. They actually built
8 these things in the critical area, in the critical area
9 buffer without permits.

10 MS. SANDERS: So, although they had a special
11 exception to do so, they didn't go through the proper
12 steps to get a permit in order to do the construction?

13 MR. BROWNLEE: (Inaudible) to get their
14 permits. Don't do the work first, get your permits.
15 That's an important thing to let people know. It's
16 important to get your permits. And it's not that we
17 haven't asked them before. It's not that they don't have
18 knowledge that they need permits. They've been in
19 violation many times before doing things, again, without
20 permits and then coming in after the fact and trying to
21 get approvals.

22 CHAIRMAN: Well, getting back to the mitigation

1 issue, the grass -- the square footage of the grass, if
2 it wasn't something that created violations, that would
3 not be included in whatever formula you used to figure
4 out the mitigation, is that right?

5 MR. BROWNLEE: And we did not.

6 CHAIRMAN: Okay. And --

7 MR. BROWNLEE: We could have because that was
8 actually -- bringing in fill, that really is grading.
9 But since it was an improvement, we did not include it.

10 CHAIRMAN: So, no damage done, no penalty, no
11 consequence.

12 MR. BROWNLEE: Right. Usually in the buffer,
13 we allow people to plant things. They don't usually have
14 to bring in so much topsoil, but we allow planting
15 without a variance. We encourage that.

16 CHAIRMAN: What's the area that was improperly
17 graded that you used to figure out what the mitigation
18 is? And has all this been submitted to them as to how
19 you figured it all out?

20 MS. COOK: Yes. There was several
21 correspondence that went back and forth. We did an email
22 to Mr. Kelsh shortly after the last board hearing. He

1 then did a memo to us which we responded to, which Dave's
2 looking at now, what we were basing --

3 MR. BROWNLEE: Should we enter this?

4 MS. COOK: Yeah, I guess. This was our final
5 response to how we were going to base the mitigation.

6 CHAIRMAN: Do we have that in the record? If
7 we don't --

8 MS. WHITT: No, I don't think we do. Can I
9 say, are we getting off track? I thought we were talking
10 about whether 1808 applied.

11 CHAIRMAN: A little bit. We've been doing a
12 lot of this this morning, so --

13 MS. WHITT: I know, but --

14 CHAIRMAN: I'm trying to get back, but I think
15 that it's important for our counsel to get as clear a
16 picture as possible and then we're probably going to have
17 to go into executive session with him to get some legal
18 direction here. Let's put that in the record.

19 MR. BROWNLEE: Okay. And do you want to --

20 MS. WHITT: I just don't want to have a whole
21 lot of testimony going about -- in one direction that
22 other people can't respond to and back and forth. You

1 know what I mean?

2 CHAIRMAN: Understood.

3 MS. WHITT: If they're going to talk about all
4 that mitigation stuff, then they've got to have a chance
5 to respond to that.

6 CHAIRMAN: And they will have that chance,
7 depending on what our decision is as to whether or not --
8 how we're going to rule on this mitigation issue and that
9 is -- you know, I want to try to keep us focused on that,
10 too. I mean, you can put that in later. You'll have an
11 opportunity to if you'd like and we'll just move on on
12 that, on the mitigation issue.

13 MS. COOK: Okay.

14 CHAIRMAN: Okay?

15 MR. BROWNLEE: Just submit this without reading
16 it?

17 CHAIRMAN: Is it related to the mitigation --
18 directly related to it?

19 MS. COOK: Directly. That's what we were
20 requiring, the calculation (inaudible).

21 MR. BROWNLEE: Well, a response to their memo
22 back about the mitigation.

1 CHAIRMAN: Is this information that's going to
2 be helpful to you at this point?

3 MR. GREEN: I'd certainly like to see it,
4 whatever it is.

5 CHAIRMAN: Okay. We'll enter it into the
6 record right now then.

7 (Whereupon, there was a brief pause in the
8 proceedings.)

9 CHAIRMAN: The applicant will need a copy as
10 well as Critical Areas.

11 (Whereupon, there was a brief pause in the
12 proceedings.)

13 CHAIRMAN: Do you have any questions at this
14 time for the county representatives, any Board members?

15 MR. REDSHAW: I don't have any other questions.

16 CHAIRMAN: Lisa, anything further?

17 (No audible response).

18 (Whereupon, there was a brief pause in the
19 proceedings.)

20 CHAIRMAN: Aside from the grading issue, is
21 there any other outstanding violation?

22 MS. COOK: There is some discrepancy about the

1 removal of a stop work order that doesn't pertain to
2 this, but that would be another violation.

3 CHAIRMAN: So, it really comes down to the
4 grading being the paramount concern, is that right?

5 MS. COOK: The work done without permits.

6 MR. BROWNLEE: All the work done without
7 permits, structures, the boardwalk around the outside.
8 All that was done without permits.

9 CHAIRMAN: The zoning of this property is what?

10 MS. COOK: Marine Commercial.

11 CHAIRMAN: And is all of the things that they
12 were doing on their property permitted under the existing
13 zoning category?

14 MS. COOK: I believe so, but, as I said, they
15 were in the site plan review process. So, there were
16 additional parking requirements and things like that that
17 I can't speak to whether or not they were addressed.

18 CHAIRMAN: But the activities, whatever it is
19 that they did, would have been permitted and not
20 prohibited by their zoning category?

21 MS. COOK: Correct.

22 CHAIRMAN: Okay. I have one other question.

1 Does the county take the position that merely applying
2 for the after-the-fact variance is an admission of
3 wrongdoing on the part of the applicant?

4 MS. COOK: I would say yes.

5 CHAIRMAN: So, just applying for a variance, it
6 creates a concession on the part of the applicant that
7 they were wrong?

8 MS. COOK: In signing the notice of violation,
9 I agree they were admitting wrongdoing, work without a
10 permit.

11 CHAIRMAN: Is there an opportunity to contest
12 the issue about whether it was right or wrong without --
13 before ever applying for such a variance under this
14 statute?

15 MS. COOK: I believe that once they go from
16 notice of violation it can go on to citation and they
17 have the option of going to court if they felt they were
18 not in the wrong. So, there's a leeway between a notice
19 of violation and a citation. We give them the
20 opportunity to, in this case, submit for the permit. So,
21 they continued through the site plan process where it was
22 determined that these variances were necessary. Had they

1 not felt that, they could have went straight to citation
2 and to court.

3 MS. SANDERS: But it looks like you only have
4 five days to decide if you're going to go to court. I'm
5 looking at your notice of violation. It says here, if
6 you elect to stand trial, you must give notice of
7 intention to stand trial at least five days before the
8 due date of payment. I mean, I don't know, you know,
9 when -- if they go through with the site process and then
10 you tell them they need a variance, aren't you already
11 then, by that time, already past the time where they can
12 then go to trial?

13 MS. COOK: Yes, but they have gone the other
14 direction. I'm saying they have, at that point, a
15 choice.

16 MS. SANDERS: You're on shaky ground with due
17 process if that's going to be your argument. I mean,
18 you're telling me I'm giving you a citation --

19 MS. COOK: That you did work without a permit.

20 MS. SANDERS: -- you can go through the process
21 and fix it or you can go to trial, but you've only got
22 five days to go to trial.

1 MS. COOK: Five days to let us know that you
2 want to go to trial.

3 MS. SANDERS: But if they're trying to work
4 with you, you're going to penalize them because now they
5 can't go to trial.

6 MS. COOK: I think really, at any point, they
7 could still go to trial. I mean, because --

8 MS. SANDERS: Not according to this notice on
9 the bottom of the violation.

10 MS. COOK: That's to keep it at notice of
11 violation. Because if we're notified that they're going
12 to go to trial, then I think we move it to citation, I
13 believe is the process. So, we're asking the question,
14 do you want to come into compliance by going for a permit
15 or do you want to move to citation and go to court at
16 that point? But I don't think that eliminates them from
17 doing that at any point.

18 MS. WHITT: Well, there's one small problem and
19 that that's new critical area law that says, if it does
20 apply to this case, it says that by submitting the
21 application for the variance that you're giving up your
22 right to contest the original notice of violation, just

1 by submitting the variance application. So, I think that
2 door --

3 UNIDENTIFIED MALE: (Inaudible).

4 MS. WHITT: Well -- yeah, that's an interesting
5 discussion. But I don't think, regardless of what the
6 county says, that, you know, if you try to work with us
7 and then decide otherwise, that you can go forward to
8 District Court. I think the new State laws slam that
9 door shut on that, at least until that gets contested
10 down the road.

11 MS. SANDERS: But even 8-1808 says
12 administrative enforcement in accordance with due process
13 principles. I think you've got a Catch-22.

14 MS. WHITT: Yes.

15 CHAIRMAN: Does the Board have any more
16 questions of the county representatives at this time?
17 We'll come back, I'm sure.

18 MR. REDSHAW: I have one other question, just
19 the practicality of what you're trying to do. Suppose,
20 hypothetically, the county tells the applicant you've got
21 to plant 10,000 trees or whatever it is that you did, and
22 it bears no relationship to the damage that was actually

1 done, the county just wants 10,000 trees. What's the
2 protection that an applicant has from some arbitrary
3 requirement that you pulled out of the air?

4 MS. COOK: I think the ordinance protects us
5 from being arbitrary.

6 MR. BROWNLEE: We apply that in any case.

7 MR. REDSHAW: So, the standard is there and the
8 standard is what you're attempting to apply and to have
9 these people perform before they go to the next step.

10 MS. COOK: Yes.

11 CHAIRMAN: Okay, thank you very much. Please
12 don't run away, I'm sorry to tell you. We're going to
13 need you back.

14 At this point, we'd love to hear from a
15 representative of the Critical Area Commission if either
16 of you are prepared to weigh in on the narrow issue that
17 we're trying to deal with here of mitigation.

18 **(Witnesses sworn.)**

19 THE CLERK: Please identify yourself for the
20 record by stating your name, address and occupation.

21 MS. GALLO: My name is Kerrie Gallo. I'm a
22 Regional Program Chief with the Critical Area Commission,

1 1804 West Street, Annapolis.

2 MR. HURLEY: Roby Hurley, Natural Resources
3 Planner, Critical Area Commission, 1804 West Street.

4 CHAIRMAN: Welcome. You've been sitting there
5 listening to all this. I think maybe -- I hope you have
6 a sense of what we're struggling with at this point.
7 We're looking at this criteria, we're looking at Ms.
8 Dise's letter and we're trying to figure out where State
9 law kicks in here and what this Board can and cannot do
10 under that new law. So, how can you help us?

11 MS. GALLO: I'll do my best. There were
12 certainly a lot of things thrown out on the table. So,
13 I'm not sure -- if I'm not covering them all, please ask
14 me.

15 First, just to clarify for the record, I am not
16 an attorney. I did not know we were going to be talking
17 about how the law applies to violations. Technically,
18 that is supposed to be handled at Planning and Zoning.

19 CHAIRMAN: We understand and we appreciate you
20 trying to help us out.

21 MS. GALLO: Okay, okay. To clarify for the
22 Board, Ms. Dise is -- she's employed by the Office of the

1 Attorney General. She's been appointed by that office to
2 serve as the legal counsel to the Critical Area
3 Commission. So, when she says in her letter, it's not a
4 formal opinion of the Attorney General, it wasn't -- it's
5 not a formal opinion of the actual Attorney General. In
6 her capacity as legal counsel to the Commission, she's
7 providing that advice.

8 Does that clarify that?

9 UNIDENTIFIED FEMALE: Uh-huh.

10 MS. GALLO: Okay. I'm a little lost as to what
11 you might want me to talk about first. Could you --

12 CHAIRMAN: Well, let's try to focus on the fact
13 that we know that the fines that were assessed by the
14 county have been paid, and that's one of the criteria in
15 the new law.

16 MS. GALLO: Yes.

17 CHAIRMAN: The other is that there be a
18 mitigation plan. Is that it? Am I correct --

19 MS. GALLO: A mitigation and restoration plan.

20 CHAIRMAN: Okay. And so far, as you heard from
21 earlier testimony, there has been -- that's where there
22 has been difficulty, over, A, whether the mitigation is

1 required and because the applicant, at this point, does
2 not feel that that is the case, as stated by their
3 attorney, that there is no mitigation plan in existence
4 right now.

5 In your opinion, understand that you're not an
6 attorney, but with the knowledge that you have in your
7 role, what position does that put this board in as far as
8 proceeding with the hearing of the variance and the
9 special exception?

10 MS. GALLO: Well, the State law says that the
11 local jurisdiction may not issue an approval, including a
12 variance special exception, until the three measures,
13 which would be the fine, the mitigation plan and then
14 having performed the measures in the mitigation plan have
15 been completed. So, I can't say as to the county's
16 citation what it said. I don't have a copy of that. You
17 know, if the applicants were properly cited, as the
18 county staff has testified they were for a critical area
19 violation, the applicants have a critical area citation
20 form, which was signed and acknowledged by them.

21 There is a process and there should be a
22 process actually spelled out in the ordinance for appeal

1 or dispute of that citation. Assuming that that period
2 has lapsed, then they're proceeding forward with seeking
3 their after-the-fact variance, before you could approve a
4 variance, you would have to have all three of those
5 components presented to you by the Planning and Zoning
6 Department as finalized.

7 CHAIRMAN: In the new law, does it specify what
8 a mitigation plan consists of?

9 MS. GALLO: Not the details. It says that it
10 has to have measures to abate impacts to water quality or
11 natural resources as a result of the violation. It
12 doesn't say what those measures are. That's left up to
13 the local jurisdictions to determine.

14 CHAIRMAN: Okay. So, if -- and this, in fact
15 -- and I'm going to try to characterize what has happened
16 so far and, once again, with all the caveats, I'm asking
17 just for your input, not necessarily even an opinion at
18 this point. What we ended our last session with was a
19 site plan that had copious notes on it dealing with
20 exactly what kinds of plantings were going to take place,
21 talking about square footage of impervious surface and
22 addressing the nature of everything on the site plan

1 related to run-off, environmental issues and a lot of
2 what normally we would be concerned with in looking at
3 it. That plan was submitted, I believe, to the county as
4 the mitigation plan, but it was not accepted.

5 Now, A, does Critical Area get involved, at any
6 point, in that review process?

7 MS. GALLO: Not generally. We would if we were
8 asked by a county to weigh in on whether the mitigation
9 plan achieved the goals in the law. But we don't have to
10 be involved.

11 CHAIRMAN: Okay, very good. So, the standards
12 by which county officials would make the judgment that it
13 was insufficient would, first of all, depend on whatever
14 natural resources plan the county had in effect?

15 MS. GALLO: Yes, and their code has specific
16 requirements for mitigation.

17 CHAIRMAN: Which has to be at least up to, but
18 may exceed, Critical Area Commission by the law.

19 MS. GALLO: It could be at least as effective,
20 but more restrictive.

21 CHAIRMAN: Okay, all right. That's all the
22 questions I have. Board members or Mr. Green, any

1 questions?

2 MR. REDSHAW: I realize you're not a lawyer,
3 but with respect to this particular piece of property, it
4 was the subject of a prior hearing before the Board of
5 Appeals and the applicants were granted the right to
6 proceed pursuant to that prior order. Then they were
7 cited, apparently, for a building code violation of not
8 having permits, which preceded the date of the Natural
9 Resources article revision. Does Critical Areas take a
10 position whether the Natural Resources article that
11 became effective July 1st, 2008, would apply to that
12 situation?

13 MS. GALLO: Yes. The bill became effective
14 July 1st, 2008 -- and I apologize, I don't have a
15 codified version, what I have is the (inaudible) version
16 of the bill. I wasn't prepared. But there is a section
17 in the new law, and it's 8-1815. I think it is A -- I
18 think it's A-23(ii). But, again, the version I have is
19 not the codified version. I'll just -- I'll read to you
20 what it says and this is our -- what we use to interpret
21 that. The violation -- there's a three -- basically a
22 three-year statute going backwards.

1 It says, a criminal prosecution or a suit for a
2 civil penalty for violation of a provision of an order,
3 permit, plan, local program, this subtitle, or
4 regulations adopted, approved or issued under the
5 authority of this subtitle shall be instituted within
6 three years after the Commission or the local
7 authorities, in fact, knew or reasonably should have
8 known of the violation. And to us, that interpretation
9 means you have a three-year statute, window essentially,
10 for which the violation could have predated the passage
11 of the law.

12 MS. SANDERS: Can you read that to me one more
13 time?

14 MS. GALLO: Sure. A criminal prosecution or
15 suit for a civil penalty for violation of a provision of
16 an order, permit, plan, local program, this subtitle or
17 regulations adopted, approved or issued under the
18 authority of this subtitle shall be instituted within
19 three years after the Commission or the local
20 authorities, in fact, knew or reasonably should have
21 known of the violation.

22 MS. SANDERS: This is within three years.

1 MS. GALLO: Yes.

2 CHAIRMAN: Is that an ex post facto law?

3 MS. GALLO: Can you -- I'm sorry, I don't know
4 what that means.

5 MS. SANDERS: It actually means that Congress
6 should pass no law that basically makes something you did
7 in the past now illegal and now I'm going to prosecute
8 you for it.

9 MS. GALLO: (Inaudible).

10 MS. SANDERS: That's part of the Constitution.
11 That's a problem. That's a problem.

12 MS. GALLO: That sounds like a question for an
13 attorney and I'm simply not comfortable answering that.
14 It's part of the bill that got passed through the General
15 Assembly. That's all I can really say about it.

16 CHAIRMAN: You think the General Assembly is
17 familiar with the United States Constitution?

18 MS. GALLO: One would certainly hope.

19 MS. SANDERS: My head's about to (inaudible)
20 right now.

21 CHAIRMAN: I'd like to ask one more question
22 and I think Ms. Gallo can answer this one. Has it been

1 the practice of the Critical Area Commission, through the
2 Attorney General's Office, to prosecute under this new
3 law the three-year stipulation?

4 MS. GALLO: Um-hum.

5 CHAIRMAN: Okay.

6 MS. GALLO: Was that the end of your question?

7 CHAIRMAN: Yes.

8 MS. GALLO: I'm sorry, I didn't mean to answer
9 it. I didn't understand the question.

10 CHAIRMAN: No, that's all right. I assume
11 that's going on, that there have been prosecutions that
12 are taking place.

13 MS. GALLO: From the State's perspective --
14 from the State's level, we have not yet had a case that
15 we have -- the State has prosecuted since the new law has
16 been passed on our own. There have been cases like this,
17 at the local level in many counties that have -- where
18 the violation has occurred prior to July 1, 2008, and the
19 new law is being applied to them.

20 CHAIRMAN: Okay. Mr. Hurley, did you have
21 anything you wanted to add before we go into executive
22 session?

1 MR. HURLEY: Yes, sir, just one question. I'm
2 just -- and it is a question. I'm just curious about the
3 fact that the applicants have, in fact, tried to develop
4 and, I guess, have developed a restoration plan and that
5 would indicate to me that there is an effort to try and
6 mitigate. And I'm just -- I just want to point that out
7 and ask that question. That would indicate that there is
8 a desire to do restoration.

9 CHAIRMAN: Yes. I mean, our interpretation
10 would be that, based on what happened at our last
11 meeting, that that was taking place. I know that there
12 were subsequent discussions, at which time the county
13 applied standards that apparently were not met. So, that
14 plan was unacceptable. And we had directed somewhat --
15 and I don't have a letter in front of me -- that that
16 issue be resolved before they return to our agenda so
17 that we might be able to move on. Therefore, we're at
18 the point right now where we have to now get legal advice
19 and make a decision as to whether or not we can proceed.

20 Thank you very much for your time.

21 MS. GALLO: May I ask one question?

22 CHAIRMAN: Yes, you may.

1 MS. GALLO: Earlier in the discussion, in
2 reaction to testimony by Ms. Welch, you were talking
3 about the provision in the new State law that said
4 notwithstanding any provision in the local law or
5 ordinance, the State law shall apply and I -- when I
6 heard the interpretation of that witness, I have a
7 different interpretation from the State's perspective and
8 I didn't know if you were interested in that or if that's
9 too off. I don't want to widen your scope already. But
10 if -- for the record, I felt like it needed to be
11 clarified from the State's position on what that means.

12 CHAIRMAN: Dealing with mitigation?

13 MS. GALLO: Dealing with how the State law
14 would apply to -- the State law that has not been adopted
15 into local ordinance would apply to this case because --

16 CHAIRMAN: All right, yes, thank you.

17 MS. GALLO: We interpret the provision that
18 says notwithstanding any provision in a local law or
19 ordinance or the lack of a provision in a local law or
20 ordinance, all of the requirements of this subtitle shall
21 apply to and be applied by a local jurisdiction as
22 minimum standards for a program sufficient to meet the

1 goals of the critical area program.

2 CHAIRMAN: As minimal?

3 MS. GALLO: Minimum standards to meet the goals
4 of the critical area program. It's the State's
5 interpretation that that means the State law has to be
6 applied and applies to local jurisdictions even if they
7 haven't yet adopted these regulations and these
8 provisions into their own local ordinances. I just
9 wanted to clarify that for the record.

10 CHAIRMAN: Okay, thank you for that
11 clarification and thank you for your testimony. I'm
12 sorry to put you on the spot like that, but we need all
13 the information we can get.

14 MS. WHITT: Mr. Chairman?

15 CHAIRMAN: All right, then, can we have a
16 motion for an executive session?

17 MS. WHITT: Mr. Chairman?

18 CHAIRMAN: Yes?

19 MS. WHITT: I think your rules say that you
20 have to give them the right to respond.

21 CHAIRMAN: Yes, they do. Then we'll have to
22 also give Critical Area the right to --

1 MS. WHITT: It says the applicant has the right
2 to respond.

3 CHAIRMAN: Yes, Ms. Welch, you certainly may.
4 Come on forward.

5 MS. WELCH: I'll try to be brief.

6 CHAIRMAN: Thank you very much.

7 MS. WELCH: I think we have two issues that are
8 currently pending with us and one is whether or not 8-
9 1808 applies, and I would ask that you address that
10 question before we get really further into the issue of
11 mitigation, because, certainly, I have a lot more
12 thoughts regarding mitigation and bonding, if we get past
13 whether or not 8-1808 applies.

14 One of the first things I'd like to reiterate
15 is that 8-1808 applies to violations of that subtitle.
16 Again, we don't have any notice or opportunity to be
17 heard on the violation of that subtitle. I'm not coming
18 before you today and saying, look, you should reward
19 people for doing things that they weren't permitted to
20 do. What the Stones have been told they're in violation
21 of is getting building permits. The only punishment for
22 that that they've been told existed was a \$500 fine.

1 They've complied with that. And, certainly, they don't
2 even come under the remainder of 8-1808 or the other
3 fines and penalties of 8-1.09 of our Zoning Ordinance
4 because they have not been violated with that section of
5 our critical area law.

6 Now, what I heard referenced earlier with
7 regards to 8-1815 in our Natural Resources, the criminal
8 prosecution or a suit for civil penalty, the three-year
9 statute of limitations. That was a 2(i) subsection to a
10 larger section that says, a person who violates the
11 provision of the order, permit, plan, local program, this
12 subtitle or regulations adopted, approved, under this
13 subtitle is now also subject to prosecution in Circuit or
14 District Court, guilty of a misdemeanor, they increase
15 the penalties. What I am quick to point out is, which I
16 think was being brought up by counsel and Ms. Sanders, is
17 that the 2008 Act, as quoted beyond that -- and I'd be
18 happy to give you all, in recess, my copies of the rules
19 -- says that for the purposes of criminal prosecution
20 under this, certainly which is above what was quoted,
21 shall be construed prospectively to apply only to a
22 critical area violation alleged to have arisen out of an

1 act or omission that originated on or after July 1st,
2 2008. So, we don't -- certainly don't have that in this
3 situation.

4 The last thing I want to say is that if we
5 really get into do we have a violation and, again, I say
6 even if we had an underlying violation, we haven't gotten
7 notice and due process rights exercised. So, it can't be
8 brought up today as we sit here. What I'm hearing said
9 is that the only critical area violation we would have
10 had was a grading violation. I think that's what I heard
11 stated earlier by Planning and Zoning.

12 And I disagree with whether or not that would
13 apply. Just quickly I would state that my reasons for
14 disagreeing with that is that what our law says -- and I
15 have it a moment ago -- it's the definition of grading,
16 and you'll find it under Article 12 of our Zoning
17 Ordinance -- is any act by which soil is cleared,
18 stripped, stockpiled, excavated, scarified or filled, or
19 any combination thereof. Soil is defined by Webster's
20 Dictionary as that portion of the earth's surface in
21 which plants grow. We're talking about oyster shells in
22 this particular situation. I heard that soil was brought

1 in, but I don't think the addition of soil is clearing,
2 stripping, stockpiling, excavated, scarified or filling
3 soil. It's different. It doesn't fall under that.
4 Certainly, I go back to the fact that we don't even have
5 a critical area violation that would get into the
6 application of 8-1808 or any of the other fine print
7 penalties under 8-1.09 that, again, gets back into a
8 critical area violation.

9 Certainly, again, I would ask if the Board
10 finds that those do apply, that when we come back in the
11 session, that I'll get a chance to address the issue of
12 mitigation.

13 CHAIRMAN: Thank you very much. Any questions
14 on the part of the Board members?

15 MR. REDSHAW: No. Mr. Chairman, I'd move that
16 the Board go to executive session now for legal counsel.

17 CHAIRMAN: All right, thank you. Second?

18 MS. SANDERS: I'll second that.

19 CHAIRMAN: All in favor, aye.

20 **(Chorus of ayes.)**

21 CHAIRMAN: All right, we'll make this as quick
22 as possible.

1 (The Board excused themselves to go into
2 executive session.)

3 CHAIRMAN: All right, we're back in session.
4 Our discussion centered, as you understand, around 1808,
5 which deals with mitigation and how the new critical area
6 law works into this whole process, what we, as a body,
7 can do and cannot do, and to that end, we have direction
8 from our attorney, good information and we're at the
9 point where I can call for a motion on that item and
10 then, depending on the motion and the outcome of the vote
11 on the motion, we may or may not proceed with taking
12 further testimony to clarify some of the issues dealing
13 with other variances and floodplain issues.

14 So, Lisa, were you going to make that motion?

15 MS. SANDERS: Yes, I'll make that motion.

16 CHAIRMAN: Thank you.

17 MS. SANDERS: I'll try. In Case Number 08-
18 3559, Louis P. Stone, I will make a motion that the Board
19 make the following findings of fact regarding the
20 applicability of Natural Resources Law 8-1808, make the
21 findings of fact that that law, 8-1808, went into --
22 became effective July 1st, 2008. Make the following

1 findings of fact that under 8-1815, Natural Resources
2 title that that law is prospective in its application.
3 Make the findings of fact that the initial -- the
4 original notice of violation predates July 1st, 2008,
5 that it was dated in June 2008 and that, therefore, the
6 purported violation occurred prior to the effective date
7 of the law.

8 The Board also notes that the actual violation
9 does not specifically refer to any violation of the
10 critical area law, that it refers to the failure to
11 obtain building permits and that any subsequent
12 investigation by the environmental planner does not apply
13 retroactively. It's not covered by that notice of
14 violation and that that notice of violation, the fine was
15 set at \$500, and that that fine has been paid.

16 Therefore, the Board makes the final
17 determination that the requirements of 8-1808, which
18 would include a mitigation plan, do not apply to this
19 application for a variance and that, therefore, we should
20 continue to proceed on the variance request.

21 CHAIRMAN: Thank you. Any additions?

22 MR. REDSHAW: I have none, sir.

1 CHAIRMAN: Do you have a second?

2 MR. REDSHAW: I have a second.

3 CHAIRMAN: And do we have any further
4 discussion?

5 (No response).

6 CHAIRMAN: No further discussion. All in favor
7 of that motion, please say aye.

8 **(Chorus of ayes)**.

9 CHAIRMAN: Opposed? None opposed.

10 All right. Now, we'll move on. I know that
11 there are a number of questions dealing with floodplain
12 and some of the other variances requested here. So, what
13 I'm going to do to facilitate this is I'm going to ask
14 Board members who have questions to direct them to
15 whomever is the most capable, in which case we may have
16 both county and the Critical Area and -- well, not
17 Critical Area, but representatives of the applicant.

18 Did you want to begin with that, Mike?

19 MR. REDSHAW: Yes, sir, Mr. Chairman, I do. We
20 received a lot of testimony not only in the last hearing,
21 but also we will get some in this hearing that will help
22 us craft a motion. I wanted to ask the applicant a

1 couple of questions. The subject property is maritime
2 commercial, but it's also an LDA property, is that
3 correct?

4 MS. COOK: Correct.

5 MR. BROWNLEE: That's correct.

6 MR. REDSHAW: Okay. Now, we had some testimony
7 at the last hearing about the adjoining property. I know
8 from looking at the critical area maps that that property
9 is identified as buffer exempt. Is it also IDA or LDA?

10 MR. BROWNLEE: LDA.

11 MR. REDSHAW: Okay. And we had discussed at
12 the last hearing that there was some belief, certainly on
13 the part of the applicant and we'll ask the county as
14 well, that there might be some belief that those two
15 properties were improperly zoned, that they should be IDA
16 and not LDA. Do you remember that testimony or do you --

17 MS. WELCH: Yes, I do.

18 MR. REDSHAW: Okay. And do you concur -- do
19 you stand by that testimony? Is that still what you
20 believe?

21 MR. KELSH: Would you -- I'm sorry, repeat
22 that.

1 MR. REDSHAW: Whether or not the -- there was a
2 discussion the last time about whether or not the subject
3 property should be IDA so it can be intensively developed
4 rather than LDA, and you all had testimony about it and
5 the county had testimony about it. I'm just wondering if
6 you -- if you would testify again about what you think of
7 that issue.

8 MR. KELSH: I believe that -- and I think as
9 came up in the '06 hearing -- that it appears to have
10 been an error on the county when they designated the
11 areas, both properties should have been designated IDA
12 because of their intense development. They were not.
13 We're here because this is the means that we can move
14 forward with the plan as submitted.

15 MR. REDSHAW: Given that they're LDA?

16 MR. KELSH: Yes.

17 MR. REDSHAW: Okay.

18 MR. KELSH: I would also like to clarify, based
19 on the discussion at the last hearing between you all and
20 the county and us, the owner has submitted a letter in
21 support to the county that if they go forward with a
22 change in the growth allocation, which would allow this

1 property to be changed over to IDA, the owner will
2 provide any documentation they have and any support that
3 the county needs to make -- to effect that change.
4 They've made that step since the last hearing.

5 MR. REDSHAW: Okay. I also have a question,
6 Mr. Chairman, regarding use. There was testimony at the
7 last hearing about use. Could you -- could you comment
8 on the applicant's use of this property since it was
9 purchased -- since its purchase date?

10 MS. WELCH: If I can have Ms. Stone.

11 MS. STONE: Yes. When we first purchased it,
12 we rented it out and used it for marine commercial work.

13 CHAIRMAN: What year was that, please?

14 MS. STONE: I believe it was 2005.

15 MS. WELCH: It was purchased in 2002.

16 MS. STONE: I can't recall offhand.

17 UNIDENTIFIED MALE: I'm just going by what the
18 staff report had in it.

19 CHAIRMAN: So, 2002?

20 MS. STONE: It was. It was rented to Greg's
21 Marine for commercial use. Following that, it was rented
22 out to Ward Marine where they -- huge barges came in and

1 took rocks and loaded equipment and whatnot from that
2 point. After that, it was used several times for -- some
3 people had additional parties at people's houses and we
4 used it for parking for that, and we used it for excess
5 parking for the restaurant if need be.

6 CHAIRMAN: Okay. So, it was a mixed use, but
7 it was a continuous use?

8 MS. STONE: That's correct.

9 CHAIRMAN: And to the best of your knowledge,
10 before you purchased this property, out of curiosity, was
11 it still being used as part of a marine commercial
12 oyster, clam operation by Mr. Denton?

13 MS. STONE: Yes, sir, it was.

14 MR. REDSHAW: Those are the only questions I
15 have of the applicant. I do have a question of the
16 county representative.

17 CHAIRMAN: Okay. Do we have any other
18 questions for the applicants?

19 MS. SANDERS: Let me just clarify because I
20 can't recall if we had this in the last hearing or not.
21 But just in relation to the request on variance on the
22 floodplain, the buildings that are in the floodplain,

1 those are strictly commercial use buildings as well, is
2 that right? I think it's the cooler/storage building,
3 the tent, the kitchen, the boat bar, those are
4 actually --

5 MR. KELSH: This entire -- the entire property
6 is in the floodplain. The only buildings/structure which
7 we believe would have to meet the floodplain ordinance
8 requirements is the outdoor storage, the storage
9 building.

10 MS. SANDERS: Is that the one with the cooler?

11 MR. KELSH: Built around the cooler, yes.

12 MS. WHITT: Well, just so we can not have to
13 revisit this in the future, I believe the county is
14 saying the banquet tent and the cooler/storage building,
15 the boat bar and the well pump house may have to meet
16 elevation requirements. The kitchen was listed in that,
17 but it was since shown that they provided an elevation
18 certificate that shows the kitchen building is in
19 compliance with floodplain requirements. So, that's not
20 at issue, but I understand what you're saying that the
21 cooler/storage building is the only one you think somehow
22 there's a difference of opinion there and the county

1 thinks these other buildings and structures, the banquet
2 tent, the boat bar, the well pump house, that they should
3 meet elevation requirements, too. And if we're going to
4 act on these variances, I don't want to walk out of here
5 with any misunderstanding about the structures.

6 MR. KELSH: Okay, could I clarify my response
7 then?

8 MS. WHITT: Um-hum.

9 MR. KELSH: I'm just going to go down the list.
10 The floodplain -- the floodplain protection elevation is
11 7.0; the storage slab is roughly at three and a half
12 feet. The ones that we feel don't require -- aren't
13 required to meet the elevation requirement are the tents,
14 which include slabs, which are secured to the slab and
15 the flaps allow free movement of the water, to not meet
16 the definition of structure in the floodplain ordinance.
17 So, therefore, we don't believe it's required. We would
18 just acknowledge that, setting that aside, the tent
19 flaps, in and of themselves, allow the water to pass
20 freely through.

21 The cooler, which is an existing structure,
22 there's no change in the value, there's no construction

1 that occurred on it, wouldn't have to meet the elevation
2 requirement until improvements were proposed greater than
3 50 percent of the value. That's our understanding. And
4 since none -- no change in value is proposed, we think
5 that can remain as is.

6 The pump house was existing, was damaged by the
7 hurricane and was reconstructed. Afterwards, it's 100
8 gross square feet which allows, under the floodplain
9 ordinance, for it not to meet the requirements if venting
10 is provided, which we could provide.

11 The shed is an accessory storage. Again, it's
12 127 gross square feet, which is less than the 300 gross
13 square foot requirement. So, in the same way, any
14 venting would be provided that would allow it to remain
15 at its existing elevation.

16 The boat exhibit bar has no enclosure and it's
17 fixed to the ground, so that should be covered by the
18 floodplain ordinance.

19 The kitchen, as mentioned, meets the code and
20 was certified under permit and the storage building is
21 the one that we believe we're here for and we'd ask that
22 variance from at this point.

1 MS. WHITT: What about electric utilities
2 serving these structures?

3 MR. KELSH: We were asking for -- my
4 recollection is the -- we don't have an identified
5 elevation on the electric where it exists. The cooler
6 was already there, again. On some of these, it may be
7 possible to raise the facilities above the floodplain
8 elevation. Again, you're talking about a three and a
9 half foot rise up. However, we would ask that -- we
10 would ask for the variance to allow us to keep the
11 electric utilities where they are as it exists because
12 there's no inherent danger or detriment to the
13 surrounding area.

14 We noted, I think last time, that the
15 floodplain ordinance, for the most part, is in effect to
16 allow floodplain insurance to be issued and we just
17 didn't see that there was a large enough issue if the
18 structures were staying down to move them up. I think
19 that was it.

20 CHAIRMAN: Does that answer your question,
21 Lisa?

22 MS. SANDERS: Yes, it does.

1 CHAIRMAN: Okay. Do you have anything further?

2 MS. SANDERS: No.

3 CHAIRMAN: Michael?

4 MR. REDSHAW: I just -- I only had a question
5 for the county reps.

6 CHAIRMAN: Okay. Before we move on there, I
7 wanted to see if Mr. Green had any for the applicant.

8 MR. GREEN: None.

9 CHAIRMAN: Okay, thank you very much. We'll
10 ask the county to answer a few questions and then,
11 hopefully, we can move right along. Thank you for your
12 patience.

13 MR. REDSHAW: Thank you. I just wanted to ask
14 you to recap, if you can think back, there was a
15 discussion about this LDA/IDA issue about this property.
16 I didn't know -- I couldn't remember whether the
17 adjoining property was LDA or IDA and I think Dan's got
18 the answer to that question, although I know it's been
19 marked as buffer exempt. Did you -- could you give us
20 your thoughts on the subject property, not the adjoining
21 property, the subject property about whether -- is LDA
22 appropriate for that? Or if you had to do it again,

1 would it be better to be IDA than LDA?

2 MR. BROWNLEE: Yeah, the IDA would be a better
3 designation for the proposed use. It's intense
4 development area. There's no limit to impervious surface
5 when you're IDA. Therefore, they would avoid a variance
6 for impervious surface if they got the IDA designation.
7 They would have to meet a 10 percent reduction of
8 pollutants if they go IDA.

9 It would not be a mistake in zoning because
10 it's not 20 acres or greater, but we could ask -- we
11 could go for and the county is proceeding with requesting
12 growth allocation. We've got a request from the
13 applicant to proceed with growth allocation and we're
14 doing that with the current set of amendments that are
15 going through. So, we are going forward with the growth
16 allocation for the site.

17 MR. REDSHAW: You answered my next question. I
18 didn't realize that -- I knew that was also discussed the
19 last time, last hearing, and I didn't know that the
20 applicant had actually created the proper paperwork to
21 trigger a request. So --

22 UNIDENTIFIED FEMALE: I have a letter.

1 MR. REDSHAW: So, you do have a letter and you
2 passed that into the process to --

3 MR. BROWNLEE: Right. They did not request a
4 special buffer management area status, but we're going to
5 take that through as well. The county will initiate that
6 even without a letter.

7 MR. REDSHAW: All right. I don't have any
8 other questions unless my colleagues do.

9 CHAIRMAN: Okay. No questions?

10 MS. SANDERS: No questions.

11 CHAIRMAN: All right. Is there anything that
12 -- any rebuttal? Any questions on the part of the
13 applicant to what you just heard?

14 MS. WELCH: No.

15 CHAIRMAN: Is there anybody in the audience at
16 this time who would like to say anything? Please come
17 forward to the microphone and be sworn in.

18 **(Witness sworn.)**

19 MS. HELIE: For the record, please identify
20 yourself by stating your name, address and occupation.

21 MR. NICHOLS: My name is Robert L. Nichols. I
22 live at 6800 Fleetwood Road in McLean, Virginia. It's

1 22101. And I'm a real estate settlement agent and I'm a
2 limited partner in the adjacent property that is owned by
3 Parr Limited Partnership. I own 50 percent or 49 and a
4 half percent of that outstanding limited partnership
5 shares.

6 CHAIRMAN: Please proceed, thank you.

7 MR. NICHOLS: My concern here is -- I don't
8 even know if this is the right time to bring it up, but
9 I'm here because there's a mention of a kitchen that
10 keeps coming up in this conversation as to whether it
11 meets the elevation, et cetera. That kitchen belongs to
12 the Parr property and it is encroaching onto this
13 property, but not owned by this property. I bring this
14 up, in particular, because I'm in litigation with Louis
15 Stone in U.S. Court in Baltimore, and in recent
16 depositions Mr. Stone testified under oath it is his
17 intention to move the kitchen over onto the property that
18 we're discussing here today, we will call the oyster
19 house property.

20 I want to certainly stand in protest of that.
21 It's an asset of ours. It does present some serious
22 problems, which I have, through my counsel, have informed

1 the County Commissioners -- Planning Commission's office
2 of in that the encroachment was never addressed when the
3 site plan was approved back in, I believe, November of
4 '04 for the Parr Limited Partnership property where
5 Stoney's Restaurant is located.

6 So, then I learned that this property is going
7 before Planning and Zoning and this issue is still not
8 addressed that I'm aware of. I have other concerns
9 beyond that. I have concerns about parking, I have
10 concerns about the sewer system for that restaurant,
11 again, going to deposition, I learned is located on the
12 property that we are discussing here today, that services
13 the kitchen. I cannot testify to that. I'm only telling
14 you that that's what I heard in testimony. I'm not
15 certain the county knows about the tanks being buried on
16 this property to service the adjacent property, but my
17 concern, being a very personal one, is that it appears
18 that it was always the intention of Mr. Stone to end up
19 with not only a tent and a building, but also a kitchen
20 on this property.

21 Thank you for your time.

22 CHAIRMAN: Sir, would you be so helpful to the

1 Board here in identifying exactly where this kitchen is
2 located?

3 MS. WHITT: Well, Mr. Chairman, I think the
4 kitchen was withdrawn from the application at the last
5 hearing because it was determined that the kitchen had
6 already received a buffer variance approval in the
7 original case and that it did not meet floodplain
8 variance approval now because it meets elevation
9 requirements. So, I believe it was withdrawn from
10 consideration and I would urge the Board to stick to
11 that.

12 CHAIRMAN: All right. Of course, your comments
13 will be part of the record and we understand your
14 concern, but for the reasons that were stated, we will
15 not be directing a decision toward that.

16 MR. NICHOLS: Understood, thank you.

17 CHAIRMAN: All right, thank you. Yes?

18 MR. KELSH: This is Dan Kelsh. I just want to
19 offer that I wasn't fully aware that there was an issue
20 about the kitchen and where the property line ran through
21 it and whatnot for this gentleman. The owner has told me
22 that, if needed, we can do a lot line amendment that

1 would change the lot line along that border so that the
2 kitchen was fully on the restaurant property, if that's
3 what I just understood.

4 CHAIRMAN: It's not an issue before this Board.

5 MS. WHITT: Well, yeah, Dan --

6 MR. KELSH: I'm just putting it on the record.

7 MS. WHITT: -- would you please put on the
8 record that the kitchen is no longer an item that needs
9 variance approval from the Board at this point?

10 MR. KELSH: Yes, it's -- I understand that the
11 kitchen no longer needs a variance from this body. I
12 just was offering that as support.

13 CHAIRMAN: Okay, fine. And last but not least,
14 Critical Area, Mr. Hurley, you are a party to this case
15 for Critical Area. Your comments are in the file. Do
16 you have anything you'd like to add to what you hear
17 before we make a final decision here?

18 MR. HURLEY: Yes, sir.

19 CHAIRMAN: I'd remind you you're under oath.

20 MR. HURLEY: Yes, sir. Only a clarification,
21 please, and that is my letter did state the site is a
22 buffer exemption area and that is incorrect. It is not a

1 buffer exemption area.

2 CHAIRMAN: Okay, what is the correct
3 designation?

4 MR. HURLEY: It's just a standard 100-foot
5 buffer.

6 CHAIRMAN: Okay, thank you.

7 MR. HURLEY: Thank you.

8 CHAIRMAN: Thank you very much for that.

9 Roxana, before I call for a motion, is there
10 anything else?

11 MS. WHITT: No, I have nothing else, as long as
12 the applicant is finished presenting their case, too.

13 CHAIRMAN: That would be my assumption. If
14 not, I apologize.

15 MS. WELCH: No. The only thing, obviously, and
16 I'm going to be brief (inaudible) summary. I apologize.

17 CHAIRMAN: You may sit if you'd like.

18 MS. WELCH: It's okay. Getting up, down, back
19 and forth, I'm really going to be brief at this point in
20 time. If we just step back and we look at what this
21 project has done for the area, I think, if anything, it's
22 an improvement. I really can't think of a better use for

1 this property than what the Stones proposed and begun
2 doing on the property. Part of the year, it's not in any
3 use. The rest of the year it's comparable to a park
4 area, if anything.

5 Certainly, you heard Ms. Stone's testimony last
6 time, it's the amount of money that she's put into trying
7 to get some vegetation on the site, something that's
8 going to make it as aesthetically pleasing as it is, at
9 least I hope you found it to be when you visited as I did
10 when I visited the site and, certainly, that's money out
11 of their pocket that they've put into doing this project
12 and I think it's achieved at least that quality.

13 Again, if the variances were denied with
14 respect to this, then certainly they'd be required to
15 remove certain things and would be in a worse off
16 position than we would be had they been granted. So, we
17 would ask that the Board approve the variances that have
18 been requested in this situation.

19 CHAIRMAN: All right, thank you. Mike, are you
20 ready with a motion?

21 MR. REDSHAW: Mr. Chairman, I am.

22 CHAIRMAN: Thank you.

1 MR. REDSHAW: Mr. Chairman, in Case Number 08-
2 3559, I move that the case be closed. I move that the
3 findings of fact set forth in the staff report presented
4 for this case, which is the same as the staff report for
5 the last hearing that we had, are hereby incorporated as
6 written.

7 This is going to be a long motion. It's got a
8 lot of moving parts. It will act -- what I've tried to
9 do is separate this into the Critical Area variances and
10 the floodplain variances. So, we'll do the Critical Area
11 variances first. Additionally, what I think appropriate
12 to do with this case is to list some findings in each of
13 those cases since this -- since the testimony and the
14 staff report really cover these two hearings that are on
15 the record. So, I want to run through a few findings
16 first and then we'll proceed through the normal checklist
17 that we'd normally do for a Critical Area variance and
18 for a floodplain variance.

19 So, Mr. Chairman, I move that the Board makes
20 the following findings -- this is the Critical Area
21 section. I move that the Board make the following
22 findings of fact and conclusions pursuant to Section 11-

1 1.01.B of the Calvert County Zoning Ordinance and based
2 on testimony and evidence presented.

3 Findings: That the Board has conducted a site
4 visit and noted the work completed without the benefit of
5 site plan approval and building and grading permits. Two
6 -- well, another finding, the Board notes that the
7 subject property has been the site of uninterrupted
8 commercial use by the Warren Denton Seafood Company for
9 approximately 50 years before the applicant acquired the
10 property in 2002. At the time of the purchase -- at the
11 time of the purchase, the property contained an oyster
12 processing facility, numerous accessory buildings,
13 including a fuel tank and large cold storage facility and
14 associated waterborne barges in Island Creek. These
15 facilities were severely damaged by Hurricane Isabel.

16 Applicant has apparently continued commercial
17 use or continued use of the impervious surface of the
18 property since purchasing the property in 2002. It
19 appeared that way during our -- certainly in our site
20 visit and we have that from the testimony as well. The
21 property is zoned marine commercial which allows a wide
22 variety of uses, including those employed by the Denton

1 Seafood Company and those -- excuse me, and those uses
2 currently employed by the applicant.

3 Significant site clean-up conforming with the
4 general purpose and intent of the Natural Resources
5 Article and the County's Critical Area Program have been
6 accomplished by the applicant. Partially demolished
7 commercial structures, commercial fuel tank and semi-
8 submerged barges and other watercraft have been removed.

9 Section 8-1.07.A provides that continuing of
10 any use legally in existence at the date of the Critical
11 Area Program approval is permitted or grandfathered
12 provided that use has not been abandoned for more than a
13 year. Use of the impervious surface on this property
14 does not seem to have been abandoned.

15 The Board wants to note that there has been
16 some discussion about LDA versus IDA and what is the
17 proper designation of this property. We'll note today
18 from testimony that, in fact, a letter has been submitted
19 to change the designation to IDA and the county's
20 (inaudible) that they've forwarded it, the paperwork.

21 And, finally, a variance in waterfront buffer
22 requirements and a special exemption were approved by the

1 Board of Appeals, Order Number 06-3382 for construction
2 of a banquet hall tent and additions to a storage
3 building and conversion of an existing building into a
4 kitchen.

5 All right. So, conclusions, number one, that
6 the development activity that is the subject of this
7 application and for which a variance is requested does
8 conform with the general purpose and intent of Natural
9 Resources Article Title 8, Subtitle 18, COMAR Title 27,
10 and the requirements of the county's Critical Area
11 Program established in the Zoning Ordinance.

12 The Board finds that the subject property has,
13 in reality, been intensely developed over the many years
14 of its commercial use. Natural habitat has not existed
15 on this property for more than 50 years. With the
16 possible exception of one small corner of the property,
17 the entire property is underlain by impervious oyster
18 shell and gravel and will not support tree cover without
19 replacement of large sections of the substrate.

20 Additionally, the Board finds that, indeed, the
21 property's impervious surface has remained in constant
22 commercial use since before the adoption of the Critical

1 Area law. Therefore, the Board finds that the variances
2 for the 15 percent impervious surface requirement and the
3 15 percent tree cover variance requirement are not needed
4 in accordance with the grandfathering clause of the
5 Calvert County Zoning Ordinance. As noted previously, a
6 waterfront buffer variance for several structures on the
7 property was granted in 2006. The structures'
8 improvements for which an additional waterfront buffer
9 variance is requested are either improvements to the
10 impervious surface, mitigations to stormwater run-off or
11 accessory structures to those structures already
12 approved.

13 Number two, that the requested variance will
14 not result in injury to the public interest. The subject
15 property is zoned Marine Commercial, which encompasses
16 and expressly allows the commercial use envisioned by the
17 applicant. Additionally, the improvements requested
18 serve to improve the environment and aesthetical
19 properties of the -- properties of the property. Ponds,
20 landscaping and grading will promote some habitat virtues
21 where none existed before. The brick walkway pavers,
22 walls and columns, boat bar, parking lot, well pump

1 house, concrete slab and gravel stone improvements and
2 other items listed in the announcement for this variance
3 request promote the general welfare by providing a
4 relaxing and pleasing environment for patrons. Safety is
5 provided -- is also promoted by solid walkways,
6 boardwalks and ample parking.

7 Number three, that granting the requested
8 variance will not adversely affect the implementation of
9 the comprehensive plan. The comprehensive plan
10 recognizes that "Calvert's commercial waterfront is one
11 of the county's main tourist attractions." And "the
12 county needs to be proactive in facilitating its proper
13 effective use." Additionally, the comprehensive plan
14 promotes "maximum utilization of areas zoned maritime
15 commercial without causing significant adverse effect on
16 aquatic resources, visual aesthetics or neighboring
17 residential uses."

18 The Board concludes through testimony received
19 and on its site visit, that all three of these attributes
20 are strongly enhanced by this project.

21 Number four, that the variance is the minimum
22 adjustment necessary to afford relief for the

1 regulations. The structures' improvements that are the
2 subject of this waterfront buffer variance request are
3 the minimum necessary to provide for accessory support
4 for the structures approved in Board of Appeals Order 06-
5 3382, and still provide for solid and safe walkways,
6 congregational spaces and parking for patrons.

7 Five, that special considerations or
8 circumstances exist that are peculiar to land or
9 structure within Calvert County and that a literal
10 enforcement of provisions within the county's Critical
11 Program would result in unwarranted hardship. Literal
12 application of the waterfront buffer restrictions leaves
13 only a very small area in the center of the property to
14 use. This literal interpretation would render a
15 commercial property unsuitable. Although it's been in
16 use currently for over 50 years, it would be completely
17 unsuitable for any commercial use and would result in an
18 unwarranted hardship for the application.

19 Six, that a literal interpretation of the
20 Critical Area legislation in the Calvert County Critical
21 Area Program and related ordinances deprive the
22 applicants of rights commonly enjoyed by other properties

1 in similar areas within the Calvert Critical Area of the
2 county. Other properties zoned as Maritime Commercial
3 which have existed as commercial operations as long enjoy
4 similar rights. In fact, the restaurant property
5 directly adjoining the subject property has been in
6 operation for many years and is specifically identified
7 on Critical Area maps as buffer exempt. Testimony during
8 these hearings indicated that perhaps both properties
9 should have been zoned IDA rather than LDA since 1986,
10 given their purely commercial uses.

11 Number seven, that the granting of the
12 variances will not confer special privilege on the
13 applicant that would be denied by the Calvert County
14 Critical Area Program to other lands or structures within
15 the county's critical area. No special privilege is
16 conferred on this variance or by this variance, but
17 rather conforms to conclusions reached in Board of
18 Appeals Order Number 06-3382 and the comprehensive plan
19 which allows for maximum utilization of marine commercial
20 properties.

21 Number eight, that the variance request is not
22 based on conditions that are the result of actions by the

1 applicant and does not arise from any conditions relating
2 to land or building use, either permitted or non-
3 conforming, on any neighboring property. This property
4 developed as it was over the years was completely devoid
5 of vegetation and over 90 percent impermeable. This
6 variance request results in the applicant's desire to
7 mitigate its environmental impact by improving
8 permeability and introducing vegetation and habitat while
9 maintaining the property's commercial value.

10 Number nine, that the granting of the variance
11 will not adversely affect water quality or adversely
12 fish, wildlife or plant habitat within the county's
13 critical area and that the granting of the variance will
14 be in harmony with the general spirit and intent of the
15 Critical Area law. The granting of this variance will
16 not have adverse environmental impacts and is in harmony,
17 indeed, strongly positive environmental improvements will
18 accrue. Stormwater management will be enhanced;
19 permeability will be increased; vegetation and habitat
20 will be introduced; and the waterfront will be
21 aesthetically and environmentally enhanced.

22 Ten, that the application was made in writing

1 to the Board of Appeals with a copy provided to the
2 Critical Area Commission.

3 Now, that would conclude the comments and
4 findings for the Critical Area variance. Now we would
5 move to the floodplain variance.

6 Mr. Chairman, I move that the Board makes the
7 following findings of fact and conclusions pursuant to
8 Section 11-1.01A and D of the Calvert County Zoning
9 Ordinance and based on testimony and evidence presented.
10 One, that the Board of Appeals has the authority to grant
11 variances from the floodplain requirements of Section 8-2
12 of the Calvert County Zoning Ordinance and the Floodplain
13 Management Ordinance. Two, that peculiar and unusual
14 practical difficulties exist on the subject parcel and
15 such difficulties are created by the topography of the
16 property and the location of long existing commercial
17 buildings within the floodplain area.

18 I got a little bit ahead of myself there
19 because I do want to have -- I do want to put some
20 findings. That was the first two conclusions, but let me
21 tick back to a couple of findings I think are important
22 to note. The first finding is that the entire property

1 lies within the 100-year tidal floodplain, that the base
2 flood elevation of the property is, I believe, seven
3 feet. No portion of the buildable area lies above the
4 base flood elevation. Another finding, the floodplain
5 management ordinance requires that the first floor of any
6 structure greater than 300 square feet be elevated to at
7 least the base flood elevation.

8 Three, this is finding number three, only the
9 pavilion tent and the storage house require approval as
10 all other items mentioned in the variance request are
11 either less than 300 square feet or are not structures.

12 And, finally, the storage house was built
13 around a large existing cooler which is part of the
14 original seafood cooler. The elevation of the cooler is
15 physically not feasible.

16 Now, conclusions, I'll go over them again.
17 Number one, the Board of Appeals concludes that it has
18 the authority to grant variances from the floodplain
19 requirements of Section 8-2 of the Calvert County Zoning
20 Ordinance and the Floodplain Management Ordinance.

21 Two, that peculiar and unusual practical
22 difficulties do exist on the subject property and such

1 difficulties are created by the topography of the
2 property and the location of long-standing commercial
3 buildings within the floodplain area.

4 Three, that the applicant has demonstrated that
5 the Board finds -- and the Board finds that the variance
6 will not result in injury to the public interest as these
7 structures are not occupied for residential purposes or
8 for continuous use. Additionally, the property is zoned
9 Marine Commercial which encompasses and expressly allows
10 the commercial use envisioned by the applicant.

11 Four, that granting the variance will not
12 adversely affect the implementation of the comprehensive
13 plan because the property is located within a Maritime
14 Commercial zone which expressly allows the uses intended
15 by the applicant and promotes maximum utilization of
16 these properties.

17 Five, that the variance requested is the
18 minimum adjustment necessary to afford relief from the
19 regulations.

20 Six, that the variance requested is not based
21 upon conditions or circumstances which are the result of
22 actions by the appellant -- or by the applicant, but due

1 to the elevation of the existing refrigeration facility
2 and the surrounding commercial property that have existed
3 for some time in the floodplain.

4 Seven, that the applicant did demonstrate and
5 the Board finds a showing of good and sufficient cause.
6 Neither structure, as we've already mentioned, is
7 residential in nature, none of the structures are
8 residential in nature and are not anticipated to be in
9 use during floods. The Board concludes that the
10 necessity of elevating the buildings is a small concern
11 with regard to safety or increased threat to the public.
12 Indeed, the pavilion tent is, in fact, a fabric-covered
13 metal frame which can be disassembled or rolled up given
14 the threat of flooding and it is also included with tent
15 flaps that could be used to mitigate flood waters.

16 Number eight, that a failure to grant a
17 variance would result in an unwarranted hardship.
18 Failure to grant the floodplain variance would result in
19 exceptional hardship to the applicant since the structure
20 in place for many years as a commercial -- since
21 structures in place as many years as commercial
22 properties could no longer be used as such. And in the

1 case of the cooler, would not be feasible -- physically
2 feasible as it's been there for long standing.

3 That granting a variance will not result in
4 increased flood heights, increased threats to public
5 safety, extraordinary public expense, create nuisances,
6 cause fraud or victimization of the public or conflict
7 with existing local or State laws or ordinances. The
8 Board finds that the granting of this variance will not
9 result in any problems of those kinds.

10 Ten, that the variance is the minimum
11 necessary, considering the flood hazard, to afford relief
12 -- considering the flood hazard at the project's
13 location.

14 Eleven, number 11, and finally, that comments
15 were solicited regarding this variance application from
16 the Maryland Department of the Environment and such
17 comments were considered by the Board of Appeals.

18 So, Mr. Chairman, I move that based upon these
19 findings and conclusions, the Board grant the variances
20 subject to the following conditions: Number one, that a
21 motion -- that -- excuse me, that this motion include
22 a --

1 UNIDENTIFIED MALE: Hold harmless clause.

2 MR. REDSHAW: That's it. Hold harmless clause
3 that would be inserted by staff into the Board order. I
4 don't think we need (inaudible) for any of this.

5 UNIDENTIFIED MALE: No.

6 MR. REDSHAW: I think we also note that none of
7 the -- as a condition that none of the structures that
8 are the subject of the motion of the variances today
9 would be used for residential purposes. And with that,
10 Mr. Chairman, I'd open it to my colleagues for additions
11 or modifications.

12 CHAIRMAN: Thank you. I have none.

13 MS. SANDERS: I have none.

14 CHAIRMAN: Do we have a second?

15 MS. SANDERS: I'll second.

16 CHAIRMAN: All right. Further discussion?

17 (No response).

18 CHAIRMAN: No further discussion. All in favor
19 of the motion, please say aye.

20 **(Chorus of ayes).**

21 CHAIRMAN: Opposed? None opposed. Motion
22 carries and the variances are granted.

1 MS. WELCH: Thank you.

2 CHAIRMAN: You're welcome. Madam Clerk, do we
3 have any more business this morning?

4 MS. HELIE: No, sir.

5 CHAIRMAN: All right. Motion for adjournment?

6 MR. REDSHAW: I so move.

7 CHAIRMAN: All right, all in favor, please say
8 aye.

9 **(Chorus of ayes).**

10 CHAIRMAN: We are adjourned.

11 **(Whereupon, the meeting was concluded.)**

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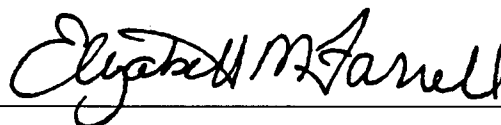
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CERTIFICATE OF TRANSCRIPTIONIST

I, Elizabeth M. Farrell, do hereby certify that the foregoing transcription was reduced to typewriting via audiotapes provided to me; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

A handwritten signature in cursive script, reading "Elizabeth M. Farrell", is written over a horizontal line.

ELIZABETH M. FARRELL

Transcriptionist



CIVIL CITATION
CALVERT COUNTY ZONING ORDINANCE

Case # 1051

Date: July 14, 2008

Commercial Y Residential N

Property Owner Name: STONE, LOUIS P III

Business Name: STONEY'S

Representative:

LOCATION OF VIOLATION

Premise Address: 3946 OYSTER HOUSE RD

BROOMES ISLAND 20615-

Parcel ID: 38C-15-0-0-0

District: DIST 2

Tax ID: 005669

Critical Area: Y

YOU ARE CHARGED WITH VIOLATING THE CALVERT COUNTY ZONING ORDINANCE
ORDINANCE SECTION:

ZO-C-101 Permits and Zoning Approval Required
ZO-C-201 Site/Plot Plans

CORRECTIVE ACTION REQUIRED:

CEASE AND DESIST ANY CONSTRUCTION ON SITE AND/OR USE OF THE BOAT BAR. ACQUIRE SITE PLAN APPROVAL & ALL PROPER PERMITS.

Date of Notice of Violation: June 24, 2008

Amount of Fine: \$500.00

Deadline for Correction of Violation: June 30, 2008

Due Date of Fine: July 25, 2008

THE FINE ASSESSED IS IN ADDITION TO COMPLIANCE WITH THE ZONING ORDINANCE, ALL OTHER COUNTY CODES, ORDINANCES AND POLICIES NOTED ABOVE IN THE CORRECTIVE ACTION

I certify that the above information is true and correct to the best of my knowledge.

INSPECTED BY:

Richard J. Smith

TO THE PERSON CHARGED: YOU HAVE COMMITTED A CIVIL VIOLATION AND YOU ARE REQUIRED BY LAW TO EITHER PAY THIS FINE AT THIS TIME OR ELECT TO STAND TRIAL.

This fine may be paid by cash or check, (made payable to Calvert County Treasurer), at the Department of Planning & Zoning, located in the Calvert County Services Plaza Bldg, 150 Main Street, Prince Frederick, Maryland, 20678. The fine must be paid within ten (10) days from receipt of this notice or you are liable for an additional fine not to exceed twice the original fine. If the citation is not satisfied within 35 days from the date the citation was issued, the County may file action in the District Court.

CHECK HERE IF YOU ELECT TO STAND TRIAL. ☐

If you elect to stand trial, you must give notice of intention to stand trial at least five days before the due date of payment as set forth in the citation. On receipt of the notice of intention to stand trial, the Zoning Officer shall forward to the District Court a copy of the citation and the notice of intention to stand trial. The Clerk of the District Court shall schedule the case for trial and notify the defendant of the trial date. All fines, penalties or forfeitures collected by the District Court for zoning violations shall be remitted to the Calvert County Treasurer.

You have the absolute right to hire a lawyer at your own expense to assist you. If you intend to hire a lawyer, you must do so immediately prior to your trial date. If you have not hired a lawyer by the time you appear for trial, the judge could decide that you have waived your right to a lawyer and could compel you to go to trial without the assistance of a lawyer.

PLEASE RETURN ONE COPY ALONG WITH YOUR SIGNATURE. FAILURE TO ACT ON THIS CITATION MAY RESULT IN A INCREASED FINE. IF YOU HAVE ANY QUESTIONS, CALL THE DEPARTMENT OF PLANNING AND ZONING AT 410-535-1600 X 2356 (TDD# 410-535-6355)

Signature: _____

Date: _____

Defendant

cc: Defendant (2)

: Department of Planning and Zoning
County Attorney



CIVIL CITATION
CALVERT COUNTY ZONING ORDINANCE

Case # 1051

Date: July 14, 2008

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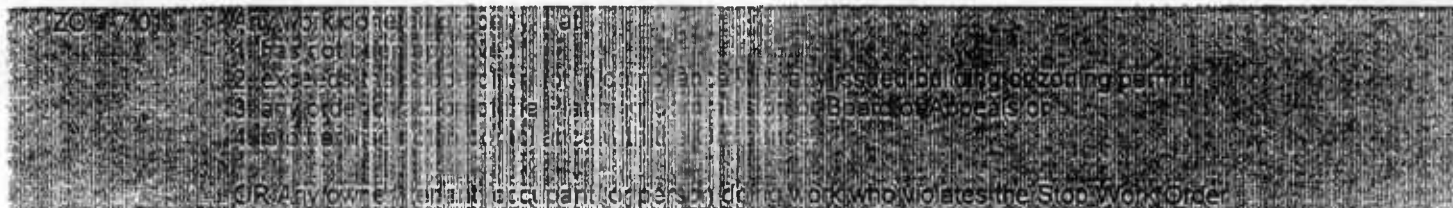
Parcel ID: 38C-15-0-0-0

District: DIST 2

Tax ID: 005669

Critical Area: Y

YOU ARE CHARGED WITH VIOLATING THE CALVERT COUNTY ZONING ORDINANCE
ORDINANCE SECTION:



CORRECTIVE ACTION REQUIRED:

REMOVAL OF THE STOP WORK ORDER IS SUBJECT TO THE MAXIMUM FINE ALLOWABLE BY LAW PER DAY AS LONG AS THE VIOLATION EXISTS.

Date of Notice of Violation: July 01, 2008

Amount of Fine: \$500.00

Deadline for Correction of Violation: July 01, 2008

Due Date of Fine: July 25, 2008

THE FINE ASSESSED IS IN ADDITION TO COMPLIANCE WITH THE ZONING ORDINANCE. ALL OTHER COUNTY CODES, ORDINANCES AND POLICIES NOTED ABOVE IN THE CORRECTIVE ACTION

I certify that the above information is true and correct to the best of my knowledge.

INSPECTED BY:

Richard Stollen

TO THE PERSON CHARGED: YOU HAVE COMMITTED A CIVIL VIOLATION AND YOU ARE REQUIRED BY LAW TO EITHER PAY THIS FINE AT THIS TIME OR ELECT TO STAND TRIAL.

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Signature: _____

Date: _____

Defendant

cc: Defendant (2)

Department of Planning and Zoning
County Attorney



DEPARTMENT OF PLANNING AND ZONING
ENFORCEMENT DIVISION

NOTICE OF VIOLATION

Case No: 1051

Date: June 24, 2008

Commercial Y Residential N

Property Owner Name: STONE, LOUIS P III

Business Name: STONEY'S

Representative:

LOCATION OF VIOLATION

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BROOMES ISLAND 20615-

Parcel ID: 38C-15-0-0-0

District: DIST 2

Tax ID: 005669

Critical Area: Y

VIOLATIONS

Enforcement of Ordinance ARTICLE 1-7.B Zoning Violation Defined: 1. A violation of this Ordinance occurs when there is (a) any work on property which requires approval of the Zoning Officer and which (i) has not been approved or (ii) exceeds the scope of, or is not in compliance with, any issued building or zoning permit, or (iii) any order or action of the Planning Commission or Board of appeals, or (iv) is otherwise not in compliance with this Ordinance.

ORDINANCE SECTION:

ZO 4-1.01	Permits and Zoning Approval Required
ZO 4-2.01	Site Plan

CORRECTIVE ACTION REQUIRED:

CEASE AND DESIST ANY CONSTRUCTION ON SITE AND/OR USE OF THE BOAT BAR. ACQUIRE SITE PLAN APPROVAL & ALL PROPER PERMITS.

We understand that you may not have been aware of this zoning regulation or that your property or business was in violation of the Zoning Ordinance. Therefore, this notice is a warning and the violation must be corrected by: June 30, 2008

- In addition to compliance with the Zoning Ordinance, all other County codes, ordinances and policies must be adhered to.
- A copy of this Notice of Violation must accompany any permit application associated with correcting the violation.
- The requirement that you apply for permits does not imply approval. Approval of permit applications will be based upon all applicable codes and policies.

WARNING:

**FAILURE TO COMPLY WITH THE CORRECTIVE ACTION BY THE ABOVE DATE
COULD RESULT IN THE ISSUANCE OF A CITATION AND A FIVE HUNDRED
DOLLAR (\$500) FINE AND/OR COURT ACTION.**

INSPECTED BY:

Richard Stiles

ARTICLE 1-7.G Other Permit Applications: No other application for building, grading, electrical or plumbing permits on the same property shall be approved until a pending violation is corrected to the satisfaction of the Zoning Officer or, if referred to District Court, to the satisfaction of the Court, unless the issuance of the permit will serve to correct the pending violation.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401

(410) 260-3460 Fax: (410) 974-5338

www.dnr.state.md.us/criticalarea/

November 24, 2008

Ms. Roxana Whitt
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: **COMMENTS ON PROPOSED VARIANCE**
Variance 08-3559 Stone

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting an after the fact variance from the 100-foot Buffer requirements in order to permit illegally constructed structures in the Buffer including an on shore boat bar, kitchen, banquet tent, storage/ building area, two ponds, landscaping, grading, well/ pump house, a block wall, parking lot, pavers, walkways, concrete slabs, gravel, sand and stone and a perimeter boardwalk. The applicant is also requesting variances for: 15% impervious surface requirements; 15% forest cover requirement; floodplain requirements; and the applicant is requesting an extension of a previously issued special exception to permit the use of the property as a banquet facility. The property is designated a Limited Development Area (LDA) and is currently developed. The site is a mapped Special Buffer Management Area (SBMA) and as such the variance request should also be for relief from SBMA standards as well.

Following the implementation of the requirements in Chapter 119 of the 2008 Laws of Maryland, should the applicant proceed to hearing we offer the following comments and concerns. In regard to the special exception and floodplain request, this office has no comments to offer. However, in regard to the requested Buffer, impervious surfaces and forest cover variances, this office has several significant concerns resulting in opposition to the requests.

Forest Cover Variance:

Using lawn grass as a substitute for forest cover is not acceptable. Lawn grass is non-native and has little wildlife value which is a major component of the Buffer. The alleged failed attempts at planting are unsubstantiated because there are currently numerous trees growing on the site. The use of proper soil medium, watering and use of native salt tolerant species should allow for forest establishment on this site.

Impervious Surface Variance:

The impervious surface variance application is insufficient because it does not contain a lot coverage plan as required in Chapter 119 of the 2008 Laws of Maryland. In addition, it is impossible to determine from the site plan which surfaces are impervious and which are porous making calculation of the 15% nearly impossible. The Board should request a lot coverage plan prior to making a decision.

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

Buffer Variance:

The SBMA provisions were put in place to provide flexibility as well as opportunities for reasonable use and redevelopment while providing for environmental benefits to the site. Very little of the SBMA standards outlined in County Ordinance Section 8-1.08 including setbacks, stormwater management, shore erosion control and mitigation have been met. Most importantly, the standards for granting a variance cannot be met. Specifically, in evaluating the variance request, the Board must determine that the applicant has met each and every one of the variance standards. I have discussed each one of the variance standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

The State law standards, applicable to this variance request, define "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, the applicant would be denied reasonable and significant use of the entire parcel or lot. Given that the applicant enjoys reasonable use of the property as evident by the amount of area outside of the SBMA setback and the Buffer we do not believe that the County has evidence on which to base a finding that, the entire parcel would be denied reasonable and significant use. In addition, many of the requested structures could be located outside of the setback and or Buffer.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*

The applicant has a reasonable use of this property for commercial purposes, and therefore, would not be denied a right commonly enjoyed by similar properties. Therefore, the rejection of a variance does not deny the applicant a right commonly enjoyed.

3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege, in this case constructing numerous structures within the SBMA setback and 100-foot Buffer, which would be denied to others in this area as well as in similar areas found within the County's Critical Area. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that the proposed variance does not conform to the Critical Area Law. The applicant has not overcome this burden.

4. *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

As this is an after the fact variance, the variance request is directly based on conditions or circumstances that are the result of the applicant. Therefore, the applicant has not met this standard.

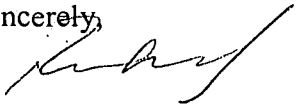
5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.

Granting of this variance is not in harmony with the general spirit and intent of Critical Area law and regulations. A granting of a variance to allow structures within the SBMA setback and 100-foot Buffer results in an increase in stormwater runoff, the loss of essential infiltration opportunities, increased human impacts to the Buffer, and habitat loss. Given that the applicant can adequately redevelop this property and locate the structures outside of the SBMA setback and 100-foot Buffer, approval of this variance is not in harmony with the general intent and spirit of the Critical Area Law.

As a result of the information stated above and because each and every one of the County's variance standards has not been met, this office is strongly opposed to the granting of a variance. We recommend that the Board deny the variance.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



Roby Hurley
Natural Resource Planner
CA 659-06

Cc; Pamela Lucas
Mary Beth Cook

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

November 24, 2008

Ms. Roxana Whitt
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: **AFTER THE FACT VARIANCE/VIOLATION**
Variance 06-3382 Stone

Dear Ms Whitt:

We are in receipt of your request for review of an after the fact variance for the above-referenced applicant. As of July 1, 2008, all Critical Area development activities which require after-the-fact variances are considered violations of the Critical Area law. Before seeking a variance to legalize the illegal structure, in this case numerous structures in the Buffer, the County must issue a notice of violation, assess a fine, be in receipt of a restoration or mitigation plan and the applicant shall have performed the abatement measures in said plan. The County may not issue the variance until these measures have been taken.

In this case, the applicants seek an after the fact variance to permit development within the 100 ft. Buffer and the Special buffer Management Area (SBMA) setback for an on shore boat bar, kitchen, banquet tent, storage/ building area, two ponds, landscaping, grading, well/ pump house, a block wall, parking lot, pavers, walkways, concrete slabs, gravel, sand and stone and a perimeter boardwalk. The applicant is also requesting variances for: 15% impervious surface requirements; 15% forest cover requirement. The property is currently developed with a restaurant and associated structures and uses and it is classified as a Limited Development Area (LDA) and mapped as a SBMA.

It is our understanding that the County has issued a "Notice of Violation" and a stop work order at this time. Other corrective actions are being required by the County which include reviewing of after the fact site plan and variance. We were advised that if the site plan and variance are not approved then removal of the un-permitted structures will be enforced.

As stated in the first paragraph above, Chapter 119 of the 2008 Laws of Maryland includes a number of provisions for after the fact variances that are applicable in this

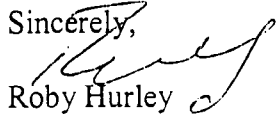
case. In addition to sections on penalty determinations and variance standards, the following applies to initial processing:

- Calvert County may not accept an application for a variance to legalize a violation, including an un-permitted structure until the County first issues a notice of violation, including assessment of an administrative or civil penalty, for the violation.
- Calvert County must consider the environmental impact, and costs of site restoration and local government inspections in determining a penalty.
- Calvert County cannot issue a permit, approval, variance or special exception until the applicant has:
 - Fully paid all administrative, civil, and criminal penalties imposed.
 - Prepared a restoration or mitigation plan, approved by Calvert County that abates impacts to water quality and natural resources as a result of the violation.
 - Implemented the abatement measures in accordance with the County's Program.

When the County has taken the above actions and is prepared to hear the variance, please include, as part of the record, the attached Comments on Proposed Variance.

If you have any questions, please call me at 410-260-3468.

Sincerely,


Roby Hurley
Natural resources Planner
CA 659-06

cc: Pamela Lucas, Esq.
Mary Beth Cook

Calvert County Board of Appeals

Memo

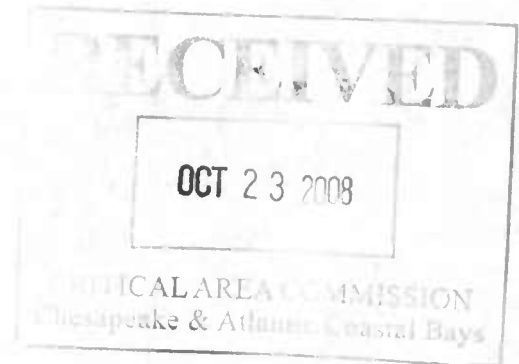
To: Roby Hurley, Critical Area Commission

From: Pam Helie, Clerk to the Board of Appeals *PH*

CC: Roxana Whitt, BOA Staff

Date: October 22, 2008

Re: Board of Appeals Cases for Review



The following cases are scheduled to come before the Calvert County Board of Appeals on Thursday, December 4, 2008. Please review the enclosed information and provide comments to Roxana Whitt no later than Tuesday, November 25, 2008.

Case No.08-3557: Kenneth & Jean Robinson have applied for a variance (after-the-fact) in the 100' waterfront buffer requirement for construction of a shed. The property is located at 205 Leason Cove, Lusby (Tax Map 45A, Lot 22R, Section 7, Block A, Drum Point) and is zoned RD Residential District. *NEW*

Case No. 08-3558: Courtney T. Camp has applied on behalf of the property owner Margaret Camp for a variance in the 100' waterfront and extended buffer requirement and for a variance in the cliff setback requirement for construction of a house, deck, porch and septic. The property is located at 3319 Bayview Drive, Chesapeake Beach (Tax Map 16A, Lots 8, 1/2-9, & 12, Willows Colony) and is zoned RD Residential District. *NEW*

Case No. 08-3559: Louis P. Stone has applied for a variance in the 100' waterfront buffer requirement for approval of structures in the buffer including an onshore boat bar, kitchen, banquet tent, storage building/area, two ponds, landscaping & grading, well/pump house, parking lot, boardwalk, concrete brick pavers, walkways, concrete slabs, gravel & stone, and a geoblock wall & columns; a variance in the 15% impervious surface requirement; a variance in the 15% tree cover requirement; a variance in the venting & elevation requirements of the Floodplain Management Ordinance as they pertain to structures and utilities for a banquet tent, kitchen, cooler/storage building, boat bar and well/pump house; and for an extension of a Special Exception granted by the Board in its Order No. 06-3382, dated January 8, 2007 to create a banquet hall. The property is located at 3946 Oyster House Road, Broomes Island (Tax Map 38C, Parcel 15) and is zoned MC Marine Commercial. *CA 659-06*
-ATF?

OTHER CASES (FOR YOUR INFORMATION ONLY) – NO COMMENTS REQUIRED:

Case No.08-3556: William & Lynne Sneade have applied for a variance in the side setback requirements from 30' to 20' for construction of an addition to an existing detached garage. The property is located at 3340 Soper Road, Huntingtown (Tax Map 20, Parcel 207, Lot 2RR, Mary D. Reida Property) and is zoned FFD Farm and Forest District. *Gen'l File*

FL

Case No. 08-3561: Tom Pelagatti, Managing Partner, Pelga, LLC has applied for a variance in the Solomons Zoning Ordinance side setback requirement for residential use next to a commercial use from 50' to 6' for construction of a townhouse containing three units. The property is located at 235 Lore Road, Solomons, MD (Tax Map 44B, Parcel 115, Avondale) in the Solomons Town Center TC/Subarea C6.

Original
File

If you have questions, I can be reached at 410/535-1600, extension 2559.

Robinson

MB Cook - was not aware ATF
Pam Lucas - N/A

Stoney's

MB Cook - Aware ATF & working
PL - N/A

Not BFA

was recommended by K6.007

• HS/IS #s are suspect; ref: K61tr
SP: 90% Apl: 64.9% - How reduced

• Show IS → Per V.

• Cannot review Vari; until Viol
is fixed.

• Ponds - No mention

**CALVERT COUNTY
BOARD OF APPEALS**

150 Main St.
Prince Frederick, MD 20678
410-535-2348 * 301-855-1243
TDD 800-735-2258

CA 659-00

CAC

08-3559

(P&Z USE ONLY)
FEES: PER FEE SCHEDULE

Date Filed: _____

Fees Paid: _____

Receipt No.: _____

Rec'd By: _____

Case No.: _____

APPLICATION FOR APPEAL

NOTE: IN SUBMITTING THIS APPLICATION, YOU GRANT THE BOARD OF APPEALS
PLANNER THE RIGHT OF UNSCHEDULED ENTRY ONTO THE PROPERTY FOR PURPOSES
OF OBTAINING INFORMATION AND PHOTOGRAPHS FOR A STAFF REPORT.

PROPERTY DESCRIPTION:

Tax Map No. 38C Parcel 15 Block — Section — Lot —

Tax ID No. 1-005669 Property Zoning Classification MC - Marine Comm.

Property Address 3946 Oyster House Rd Branes/shd, MD 20615

Has subject property ever been before the Board of Appeals? ☒ (yes) ☐ (no)

If yes, give Case No. and date: 06-3382 12/7/06

PROPERTY OWNER(S):

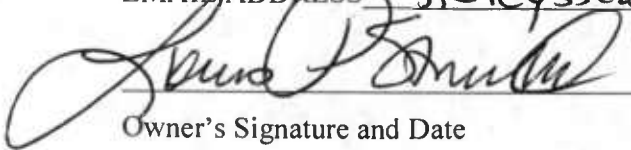
PRINTED NAME(s): Louis P. Store III

MAILING ADDRESS: PO Box 241

Danell, MD 20629-0241

TELEPHONE: HOME: _____ WORK _____ CELL 410 610 6722

EMAIL ADDRESS storeysseator@msn.com


Owner's Signature and Date

Co-Owner's Signature and Date

APPLICANT (if different from owner):

PRINTED NAME: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS _____

RECEIVED

OCT 23 2008

CRITICAL ZONE
Chesapeake & Atlantic Coastal Bays

Applicant's Signature and Date

Co-Applicant's Signature and Date

PURPOSE OF APPEAL

REQUEST IS FOR: (check all items that apply)

- ☐ Variance ☒ Multiple Variances
- ☒ Revision to a Previously Approved Variance
- ☐ Special Exception
- ☒ To Extend Time Limit on a Special Exception
- ☐ Revision/Modification of a Special Exception
- ☐ Expansion or Revision of a Non-Conforming Use
- ☐ Reconsideration of Previous Decision by Board
- ☐ Re-Schedule a Case Previously Postponed
- ☐ Decision on an Alleged Error made by _____

Describe in specific detail the reason each item is requested. Building Restriction Line (BRL) variances must state which BRL is at issue (i.e., front/side/rear) and indicate distances required and proposed (Example: A variance in the front setback from 60 feet to 25 feet for construction of a garage). Impervious surface variances must state existing % impervious surface and % requested. Waterfront buffer variances must state the distance to the waterfront of the proposed structure.

SEE ATTACHED MEMO

DIRECTIONS TO PROPERTY FROM COURTHOUSE: (NOTE: FAILURE TO PROVIDE COMPLETE AND ACCURATE DIRECTIONS MAY RESULT IN A DELAY TO YOUR CASE)

MO 2/4 south to MO 264 take right. Follow
to Oyster House Road take left. Property at
90° bend in Oyster House Road (Formerly Denton's
Oyster House)

Collinson, Oliff & Associates, Inc.

PO Box 2209
Prince Frederick, MD 20678
Phone: 410-535-3101 • 301-855-1599
Fax: 410-535-3103
Email: dkelsh@coainc.com

Memo

To: Board of Appeals

Attr: Roxanna Whitt

From: Dan Kelsh

CC: file

Date: 10/16/08

Project: Stoney's ~ Banquet Facility
COA Job #: 1-8668

Re: BOA Request Information

The attached package is submitted for review and action as summarized below. If you have any questions or require additional information, please call.

1. Critical Area Criteria Variance:

- a. Structures within the buffer including the boat bar, kitchen, banquet tent on slab, storage building/area, decorative ponds (2), landscaping & grading, well/pump house, parking lot, boardwalk, concrete & brick pavers, walkways, concrete slabs, gravel & stone and a geo-block wall and columns. *How much of this is CFd or legally approved?*
- b. The existing site is almost entirely impervious (90.1% - building, slab, parking lot & compacted oyster shells). The owner has reduced the impervious area as shown (64.9%) but cannot meet the 15% maximum required by code and requested by staff. *- EDD as Proposed*
- c. The existing site is almost entirely void of trees. The owner has attempted to plant trees repeatedly without success. The owner requests that the grass be accepted as meeting the 15% tree cover requirement. *No.*

2. Flood Plain Ordinance Variance: It would be impractical to raise the banquet tent slab, kitchen, cooler/storage building, boat bar, and well/pump house to meet the requirements of the flood plain ordinance. It is requested to keep the facilities at the current elevations and permit limited utilities below the flood protection elevation.
3. Special Exception Extension (BOA #06-3382): The original SE approval will expire on 1/8/09. It may not be possible to implement the plan by that time so an extension is requested to allow for final site plan approval and permitting.

SITE PLAN REVIEW

DEPARTMENT OF PLANNING AND ZONING

DATE: September 11, 2008

MEMO TO: Bobbi Hutchinson
Planner

MEMO FROM: John Swartz
Planner I

RE: SPR 06-37
Stoney's Banquet Facility

Comments of Planning and Zoning Environmental Review:

1. The entire project is mapped as A7 (Elevation 6) and must conform to FEMA regulations as detailed in the Calvert County Floodplain Management Ordinance. New construction, including the proposed kitchen, must be raised to a minimum of 7'. The construction may constitute a substantial improvement and would require the elevation of the existing structures, i.e. the existing cooler. Please provide the documentation showing the value of the existing cooler and the value of the improved cooler/ storage building.
2. All appropriate paper work must be provided for the banquet facility, storage building, the well house, and the boat bar/exhibit including Agreements to provide Elevation Certificates, Elevation Certificates prior to framing and final as-built Elevation Certificates, Non-conversion Agreements, Memos of Land Restriction, and Venting Affidavits.
3. The site exceeds the 15% impervious threshold and shall come into compliance.
4. Provide building permits for all structures. The Board of Appeals Order granted a Special Exceptions for the banquet facility. All Structures in the buffer require a variance or special exception including the boat bar, the storage building and the ponds.
5. Marine Commercial Zoning is intended to provide businesses which supply and cater to marine activities and needs.
6. This site must comply with all Critical Area Regulations and the Calvert County Floodplain Management Ordinance. This site is not in compliance with these ordinances.
7. Although the report to the Board of Appeals from Roxanna Whitt states that the 15% replanting requirement is not achievable, she recommends that the pervious areas be planted with salt tolerant species. However, the Board of Appeals order does not specifically grant a Special Exception to the 15% planting requirement, therefore the requirement remains and may only be satisfied by planting native species.
8. Please apply for all required permits including building, grading, plumbing and electrical permits as required by Condition 1 of the Special Exception granted by the Board of Appeals.
9. Due to the amount of disturbance in the 100' buffer, that this is a Special Exception for a commercial use, and it is a substantial alteration to a previous application to the Board of Appeals, the Critical Area Planner would request that this site plan be sent to the Chesapeake Bay Critical Area Commission for their comments. Please inform the Commission that this is an enforcement action and the buildings have already been constructed.

AFFECTED PROPERTY OWNERS LIST

YOU MUST LIST THE NAMES AND ADDRESS OF ALL ADJOINING PROPERTY OWNERS AND THE OWNERS OF THOSE PROPERTIES DIRECTLY ACROSS ALL ADJACENT STREETS AND/OR RIGHTS OF WAY. NOTE: FAILURE TO CORRECTLY LIST NAMES AND ADDRESSES OF ALL AFFECTED PROPERTY OWNERS MAY RESULT IN A DELAY TO YOUR CASE.

TM 386 P.24 Name: Elizabeth Fern Capper
Address: 3954 Oyster House Road Brookes Island, MD 20615

TM 386 P.32 Name: P.A.R. Limited Partnership
Address: PO Box 241 Powell, MD 20627

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

IF YOUR PROPERTY ADJOINS A PRIVATELY OWNED ROAD, YOU MUST LIST THE NAME AND ADDRESS OF THE OWNER BELOW:

Name: _____

Address: _____

CRITICAL AREA COMMISSION
FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 WEST STREET, SUITE 100
ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: Calvert County

Date: 10/16/08

Tax Map #	Parcel #	Block #	Lot #	Section
<u>33C</u>	<u>15</u>			

Tax ID: 1-005669

FOR RESUBMITTAL ONLY

Corrections ☐
Redesign ☐
No Change ☐
Non-Critical Area ☐

*Complete Only Page 1
General Project Information

Project Name (site name, subdivision name, or other) Stone's Banquet Facility

Project location/Address 3946 Oyster House Road

City Brownes Island, MD Zip 20615

Local case number

Applicant: Last name Stone, III First name Louis P.

Company

Application Type (check all that apply):

Building Permit ☒
Buffer Management Plan ☐
Conditional Use ☐
Consistency Report ☐
Disturbance > 5,000 sq ft ☒
Grading Permit ☒

Variance ☒
Rezoning ☐
Site Plan ☒
Special Exception ☒
Subdivision ☐
Other ☐

Local Jurisdiction Contact Information:

Last name Whitt First name Rexana

Phone # 410 535-1600 x 2335 Response from Commission Required By

Fax # 410-414-3092 Hearing date

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

Banquet Facility

Intra-Family Transfer ☐
Grandfathered Lot ☐

Growth Allocation ☐
Buffer Exemption Area ☐

Project Type (check all that apply)

Commercial ☒
Consistency Report ☐
Industrial ☐
Institutional ☐
Mixed Use ☐
Other ☐

Recreational ☐
Redevelopment ☒
Residential ☐
Shore Erosion Control ☐
Water-Dependent Facility ☐

SITE INVENTORY (Enter acres or square feet)

	Acres	Sq Ft
IDA Area		
LDA Area	<u>1.31</u>	
RCA Area		
Total Area		

Total Disturbed Area Acres Sq Ft

of Lots Created

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees	<u>0</u>	<u>0</u>	Existing Impervious Surface	<u>1.13</u>	
Created Forest/Woodland/Trees	<u>0</u>	<u>0</u>	New Impervious Surface	<u>0</u>	
Removed Forest/Woodland/Trees	<u>0</u>	<u>0</u>	Removed Impervious Surface	<u>0.33</u>	
			Total Impervious Surface	<u>0.85</u>	

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance	<u>1.00</u>		Buffer Forest Clearing	<u>0</u>	
Non-Buffer Disturbance	<u>0.11</u>		Mitigation	<u>0</u>	

Variance Type

Buffer ☒
Forest Clearing ☐
HPA Impact ☐
Impervious Surface ☒
Expanded Buffer ☐
Nontidal Wetlands ☐
Setback ☒
Steep Slopes ☐
Other ☒ Final Plan

Structure

Acc. Structure Addition ☐
Barn ☐
Deck ☐
Dwelling ☐
Dwelling Addition ☐
Garage ☐
Gazebo ☐
Patio ☐
Pool ☐
Shed ☐
Other ☒ Comm. Structures

Recommend against
significant imp.
process of redvel. - can't
should renew + recommend to can't
not appropriate to
ask don't evaluate
these options
our position
that parking lot
is imp.
Not an appropriate
process to accommodate
redvel. project

7030-08
669-06
CAC

**CALVERT COUNTY
BOARD OF APPEALS**

150 Main St.
Prince Frederick, MD 20678
410-535-2348 * 301-855-1243
TDD 800-735-2258

(P&Z USE ONLY)
FEES: PER FEE SCHEDULE

Date Filed: _____
Fees Paid: _____
Receipt No.: _____
Rec'd By: _____
Case No.: 06-3382

APPLICATION FOR APPEAL

NOTE: IN SUBMITTING THIS APPLICATION, YOU GRANT THE BOARD OF APPEALS PLANNER THE RIGHT OF UNSCHEDULED ENTRY ONTO THE PROPERTY FOR PURPOSES OF OBTAINING INFORMATION AND PHOTOGRAPHS FOR A STAFF REPORT.

PROPERTY DESCRIPTION:

Tax Map No. 38 C Parcel 15 Block _____ Section _____ Lot _____

Tax ID No. 01-005669 Property Zoning Classification MC

Property Address 3946 Oyster House Rd Broomes Island, MD 20615

Has subject property ever been before the Board of Appeals? _____ (yes) ☒ (no) ?

If yes, give Case No. and date: _____

PROPERTY OWNER(S):

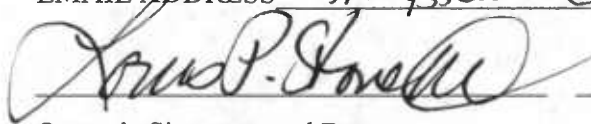
PRINTED NAME(s): Louis P. Stone III

MAILING ADDRESS: P.O. Box 241

Dowell, MD 20629-0241

TELEPHONE: HOME: _____ WORK 410 326 0602 CELL _____

EMAIL ADDRESS stoneysseaboard@msn.com



Owner's Signature and Date

Co-Owner's Signature and Date

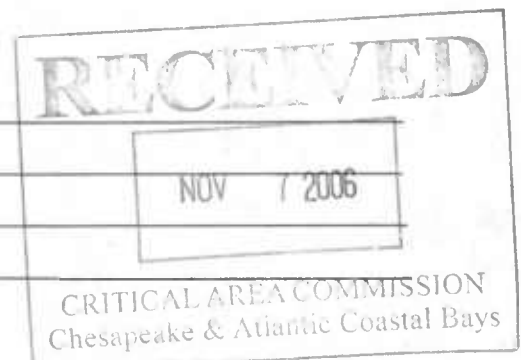
APPLICANT (if different from owner):

PRINTED NAME: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS _____



Applicant's Signature and Date

Co-Applicant's Signature and Date

PURPOSE OF APPEAL

REQUEST IS FOR: (check all items that apply)

- ☒ Variance ☐ Multiple Variances
- ☐ Revision to a Previously Approved Variance
- ☒ Special Exception
- ☐ To Extend Time Limit on a Special Exception
- ☐ Revision/Modification of a Special Exception
- ☐ Expansion or Revision of a Non-Conforming Use
- ☐ Reconsideration of Previous Decision by Board
- ☐ Re-Schedule a Case Previously Postponed
- ☐ Decision on an Alleged Error made by _____

Describe in specific detail the reason each item is requested. Building Restriction Line (BRL) variances must state which BRL is at issue (i.e., front/side/rear) and indicate distances required and proposed (Example: A variance in the front setback from 60 feet to 25 feet for construction of a garage). Impervious surface variances must state existing % impervious surface and % requested. Waterfront buffer variances must state the distance to the waterfront of the proposed structure.

1) SPECIAL EXCEPTION FOR BANQUET FACILITY (weddings / Events)

10/23/06
W
2) Variance: Water front buffer from 100ft to within
16 ft[±]. Proposed storage bld (chair/cooler/
storage) & proposed banquet facility (tent)
are almost entirely w/in footprint of
bld removal & further from waterfront
(Ex. bld was within 2-3ft[±]).

DIRECTIONS TO PROPERTY FROM COURTHOUSE: (NOTE: FAILURE TO PROVIDE COMPLETE AND ACCURATE DIRECTIONS MAY RESULT IN A DELAY TO YOUR CASE)

MD 2/4 South to MD 264 take right. Follow to
Oyster House Road take left. Property at 90 bend
in Oyster House Road (Formerly Anton's Oyster House).

AFFECTED PROPERTY OWNERS LIST

YOU MUST LIST THE NAMES AND ADDRESS OF ALL ADJOINING PROPERTY OWNERS AND THE OWNERS OF THOSE PROPERTIES DIRECTLY ACROSS ALL ADJACENT STREETS AND/OR RIGHTS OF WAY. NOTE: FAILURE TO CORRECTLY LIST NAMES AND ADDRESSES OF ALL AFFECTED PROPERTY OWNERS MAY RESULT IN A DELAY TO YOUR CASE.

TM 386 P.24

Name: Elizabeth Fern Conner

Address: 3954 Oyster House Rd Broomes Island, MD 20615

m 386 P.32
Lot 2

Name: P A R Limited Partnership

Address: P.O. Box 241 Dowell, MD 20629-0241

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

IF YOUR PROPERTY ADJOINS A PRIVATELY OWNED ROAD, YOU MUST LIST THE NAME AND ADDRESS OF THE OWNER BELOW:

Name: _____

Address: _____

CRITICAL AREA COMMISSION
FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 WEST STREET, SUITE 100
ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction:

Date:

Tax Map #	Parcel #	Block #	Lot #	Section
38C	15			

FOR RESUBMITTAL ONLY

Corrections ☐
Redesign ☐
No Change ☐
Non-Critical Area ☐

*Complete Only Page 1
General Project Information

Project Name (site name, subdivision name, or other) DENTON'S OYSTER HOUSE

Project location/Address 3946 OYSTER HOUSE RD

City BROOMES ISLAND Zip 20615

Local case number _____

Applicant: Last name STONE First name LOUIS

Company _____

Application Type (check all that apply):

Building Permit	<input type="checkbox"/>	Other	<input type="checkbox"/>
Buffer Management Plan	<input type="checkbox"/>	Rezoning	<input type="checkbox"/>
Conditional Use	<input type="checkbox"/>	Site Plan	<input type="checkbox"/>
Consistency Report	<input type="checkbox"/>	Special Exception	<input checked="" type="checkbox"/>
Disturbance > 5,000 sq ft	<input type="checkbox"/>	Subdivision	<input type="checkbox"/>
Grading Permit	<input type="checkbox"/>	Variance	<input checked="" type="checkbox"/>

Local Jurisdiction Contact Information:

Last name Whitt First name Roxana

Phone # (410) 535-1600 x 2335 Response from Commission Required By _____

Fax # (410) 414-3092 Hearing date _____

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

BANQUET FACILITY

Intra-Family Transfer	Yes <input type="checkbox"/>	Growth Allocation	Yes <input type="checkbox"/>
Grandfathered Lot	<input type="checkbox"/>	Buffer Exemption Area	<input checked="" type="checkbox"/>

Project Type (check all that apply)

Commercial	<input checked="" type="checkbox"/>	Recreational	<input type="checkbox"/>
Consistency Report	<input type="checkbox"/>	Redevelopment	<input type="checkbox"/>
Industrial	<input type="checkbox"/>	Residential	<input type="checkbox"/>
Institutional	<input type="checkbox"/>	Shore Erosion Control	<input type="checkbox"/>
Mixed Use	<input type="checkbox"/>	Water-Dependent Facility	<input type="checkbox"/>
Other	<input type="checkbox"/>		

SITE INVENTORY (Enter acres or square feet)

	Acres	Sq Ft
IDA Area		
LDA Area	1.30	56,628
RCA Area		
Total Disturbed Area		

Total Disturbed Area

of Lots Created

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees	0		Existing Impervious Surface	0.41	17,825
Created Forest/Woodland/Trees	0		New Impervious Surface		
Removed Forest/Woodland/Trees	0		Removed Impervious Surface		
			Total Impervious Surface	0.37	16,128

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance	0.141	4,305	Buffer Forest Clearing	0	0
Non-Buffer Disturbance			Mitigation	0	0

Variance Type

Buffer	<input checked="" type="checkbox"/>
Forest Clearing	<input type="checkbox"/>
HPA Impact	<input type="checkbox"/>
Impervious Surface	<input type="checkbox"/>
Expanded Buffer	<input type="checkbox"/>
Nontidal Wetlands	<input type="checkbox"/>
Other	<input type="checkbox"/>
Setback	<input type="checkbox"/>
Steep Slopes	<input type="checkbox"/>

Structure

Acc. Structure Addition	<input type="checkbox"/>
Barn	<input type="checkbox"/>
Deck	<input type="checkbox"/>
Dwelling	<input type="checkbox"/>
Dwelling Addition	<input type="checkbox"/>
Garage	<input type="checkbox"/>
Gazebo	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>
Patio	<input type="checkbox"/>
Pool	<input type="checkbox"/>
Shed	<input checked="" type="checkbox"/>

TENT

659-06

SITE PLAN REVIEW TRANSMITTAL

DEPARTMENT OF PLANNING & ZONING

Calvert County Courthouse
Prince Frederick, MD 20678

October 31, 2008

PLANS TO: Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

FROM: *BL* Bobbie Hutchison (Phone: 410-535-1600 X2378)
Planner I - Site Plans

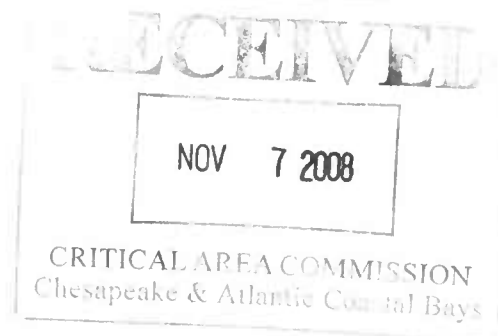
RE: Stoney's Banquet Facility, Broomes Island
At former Denton's Oyster House
SPR 06-37

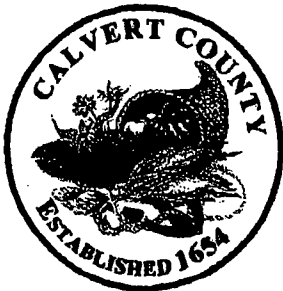
A copy of the site plan currently under review by Calvert County agencies is being forwarded to the Critical Area Commission staff at the request of John Swartz, Environmental Planner for Calvert County.

It was originally submitted 9/15/06 and the application form stated that the existing impervious surface of 17,825 sq. ft. was being reduced by the redevelopment, to 15,670 sq. ft. For that reason, and the fact that the Board of Appeals granted a Special Exception, and a variance in the 100-ft. waterfront buffer requirements (Case #06-3382), I did not believe the original design met the 15,000 sq. ft. of land disturbance criteria for submission to the Critical Area Commission and it was not forwarded.

The attached revised plan submitted to Calvert County 8/1/08, reflects an "as-built" situation (absent site plan or permit approvals). The owners have filed a subsequent application to the Board of Appeals, Case #08-3559, scheduled for hearing on Dec. 4, 2008 (see attached notice).

Agent: Dan Kelsh, COA
/blh





Site Plan Review Application

Calvert County, Maryland

Department of Planning and Zoning

150 Main Street

Prince Frederick, MD 20678

Phone: (410)535-2348 or (301)855-1243 TDD: (410)535-6355

Fax: (410)414-3092 Email: pz@co.cal.md.us

IMPORTANT INFORMATION FOR APPLICANT:

All information must be completed and all items applicable on the attached "Site Plan Application Package Checklist" must be provided. Package preparation instructions are on the checklist. Please call Planning and Zoning with any questions about submittal requirements.

PROJECT INFORMATION

Date of Submittal 9/15/06

Case# _____

☐ Category I: TEG and Planning Commission Review

☒ Category II: TEG Review

(Zoning Ordinance 4-2.01 describes categories)

If the subject of previous Concept Review, please provide Case # N/A

(Concept plan review is required first for all Category I site plans)

Fee Remit # _____

☐ No Fee/Non-Profit Org.

☐ \$400- 5,000 square feet and over (of new construction)

☒ \$100- less than 5,000 square feet (of new construction)

Project Name THE OYSTER HOUSE PROPERTY

Premise Address 3946 OYSTER HOUSE ROAD

Road Type: ☐ SHA ☒ County ☐ Private

(check all that apply and list all roads)

Road Frontage OYSTER HOUSE ROAD

NOTE: Please obtain and review the Customer Assistance Guide titled "How to Obtain Site Plan Approval for Commercial Building Permits." This guide details the development review process, timelines, and additional applications that may be required for your construction project.

Site Plan approval is not a permit. Following site plan approval, construction permits must be obtained for grading/clearing, building construction and signs. An occupancy permit is required for change in use.

PARCEL INFORMATION

(parcels included in the application)

Tax Map. No	Parcel No.	Tax ID No.	Lot (if any)	Block (if any)	Section (if any)
38C	15	1-005669	—	—	—

Zoning District MC Town Center — Sub District —

Community Planning District 14 (see attached map) Election District ☒1 ☐2 ☐3

Current Deed Reference & Date KAS 1634/574 11/02 (Copy of deed is required per checklist)

Total Acreage of Property 1.30 Act Total Acreage Disturbed 4300 ft² 0.1 Act

Check all proposals applicable to this development:

☐ Subdivision ☐ Lease Lot ☒ Combine/replat parcels or lots ☐ Condominium
possible?

Is property within Critical Area? ☒ Yes ☐ No Acreage in Critical Area: 1.30

If so, which district? ☐ IDA ☒ LDA ☐ LDA3 ☐ RCA

☒ Submit Critical Area Form

Current or Past Applications (if any):	Case #	Action Date
Rezoning <u>Unknown</u>		
Board of Appeals		
Subdivision <u>?</u>		
Previous Site Plan Review		
Architectural Committee		
Historic District		
Historic Sites Survey		
Other		
Other		

Provide a transmittal letter, if applicable:

- Explanation for any missing or pending information (examples are signatures; pending recording of access easement or subdivision plat; pending Board of Appeals application).
- Requests for waivers or reductions with Ordinance reference and explanation and justification.
- NOTE: Waivers of wetland delineation and/or traffic impact analysis must be requested and obtained prior to, and submitted with this application (see checklist and Customer Assistance Guide).

PROJECT DESCRIPTION

Specific Type of Business Commercial Banquet Hall

☐ Public Water

☐ Public Sewerage

☒ Private Water

☐ Private Septic System N/A

Provide the following information from the Calvert County Zoning Ordinance available in the Department of Planning and Zoning, the Public Library, and on-line at <http://www.co.cal.md.us/>.

- 1) Gross square footage of existing building(s) 10,300 Prev. Renovation + 530 Cold Storage
- 2) Gross square footage of new construction 0 - No enclosed facility
- 3) Gross TOTAL square footage proposed at completion of construction 530 sq ft
- 4) Gross SUBTOTALS of square footage areas by use with the Zoning Ordinance reference from Article 3 Land Uses. (Example: 6,000 sq.ft. garden center @ 3-1.02)

3,600 sq ft Comm. Banquet @ 3-1.06 # 5

2,464 sq ft Storage Bld @ 3-1.11 # 1

5) Height

30 ft (Tent)

6) Basement/below-grade floor

N/A

7) Number of floors above-grade

N/A

8) # of Classrooms

N/A

9) Enrollment number

N/A

10) Patron area

N/A

11) Largest assembly/occupant capacity

120

12) Number of employees

TBD

ATTACHED HOUSING / MULTI-FAMILY

N/A

☐ Public Water

☐ Public Sewerage

☐ Private Water

☐ Private Septic System

of Dwelling Units by Type

Zoning Ordinance Reference

Density / Units per Acre (divide the # of units by the acreage)

Acreage of Open Space

Request these additional forms from P&Z Dept:

Recreation Area Worksheet

Determination of Adequacy of Schools (with final submission)

OWNER AUTHORIZATION

CASE#

I/We the undersigned and the owners of the property described above do hereby submit this application for site plan review and authorize the agent(s) listed below to act on my/our behalf. I/We also authorize and give consent to entry upon the subject property by review agencies' staff and/or board members to the extent necessary to evaluate and act upon this application. In the event the applicant withdraws this authorization to enter, this application shall be deemed withdrawn in its entirety. (If there are more than two owners, please attach a supplemental signature form.)

Owners Corporation (if any) _____

☐ I WISH TO BE CONTACTEDPrint or type First Name LOUIS P. Last Name SPNE IIISignature _____ Date 9/15/06

Print or type First Name _____ Last Name _____

Signature [Signature] Date 9/15/06Address PO Box 2411 City Dowell State MD Zip Code 20629Phone# 410 326-0602 Email stoneysschool@msn.com

APPLICANT/DEVELOPER INFORMATION & AUTHORIZATION (if different than owner)

I/We the undersigned do hereby submit this application for review and authorize the agent listed below to act on my/our behalf. (If there are more than two applicants, please attach a supplemental signature form.)

Applicant Corporation (if any) SAME AS ABOVE

Print or type First Name _____ Last Name _____

Signature _____ Date _____

Print or type First Name _____ Last Name _____

Signature _____ Date _____

Address _____ City _____ State _____ Zip Code _____

Phone# _____ Email _____

AGENT CERTIFICATION

I certify that the information, attachments and plans submitted herewith are true and correct to the best of my knowledge and ability. I file this application and will act on behalf of the owner(s) and applicant(s) listed above.

Print or type First Name DAN Last Name KELSHSignature [Signature] Date 9/15/06Agents Corporation (if any) COA, Inc.Address PO Box 2209 City PF State MD Zip Code 20673Phone# 410 535-3101 Fax# 410 535-3103 Email dkelsh@coa-inc.com

CRITICAL AREA FORM

April 21, 1999

If your property is located within the Critical Area (land within 1,000 feet of the mean high water line of the Chesapeake Bay or Patuxent River, its tributaries, or the landward boundary of tidal wetlands), please complete the following information. Supplying this information will greatly expedite the processing time of your permit.

Owners Name: LOUIS P. STONE III Address: PO BOX 241 DOWELL MD, 20629

Phone: 410 326-0602 Tax ID 1- Tax Map 30C Parcel 15 Lot — Block — Section —

IDA — LDA-3 — LDA ✓ RCA — Total square footage of property: 1.34 56,930

1. Purpose of the permit: Install tent/slab and construct bld on slab
2. Total square footage of disturbance for the project: 4,300 sq ft
3. Will any of the proposed disturbance occur within the 100 ft. buffer adjacent to a tidal waterway or wetland?
Yes ✓ No —
4. Do trees cover at least 15% of the property? Yes — No ✓
(Calculate: size of property 56,930 x 15% = 8,540 / 400 = 22 = approximate number of 6' tall and 1 1/2" caliper or larger trees required to meet the 15% tree cover requirement)
5. What is the square footage of the area of tree cover to be removed? 0 sq. ft.
6. Is the proposed building site on slopes of 15% or greater? Yes — No ✓ (If yes, this information should be shown on the plat. Any development on 15% or greater slopes will require a variance from the Board of Appeals.)
7. Identify on the plat any waterways and wetlands which may be adjacent to or on the property. (This includes both tidal and non-tidal rivers, bays, creeks, streams, marshlands, swamps, bogs, etc.)
8. Identify on the plat and give the square footage of the impervious areas on the property. (Impervious areas are surfaces through which water cannot seep. For example, house, garage, shed, pool, or driveways which are constructed with concrete, asphalt, or CR 6 stone, etc. Wooden decks are not included unless there is no spacing between the boards, they are covered, enclosed, or have an impervious surface underneath.)

Total square footage of existing impervious area = 17,225
Square footage of proposed impervious area = 15,670

Note: Lots under 1/2 acre may not have impervious area in excess of 25% of total lot area.
Lots over 1/2 acre may not have impervious area in excess of 15% of total lot area.
If the recorded plat for this property indicates the impervious area limit to be different than indicated above, we will be required to use that amount.

9. In addition, if the property is in the IDA designation, then section 4-7.06 of the Calvert County Zoning Ordinance will need to be addressed.

ADDITIONAL INFORMATION REQUIRED FOR WATER DEPENDENT PROJECTS:

10. What type of water dependent project are you proposing?

- W/A
- A. Private Pier yes___
 - B. Community Pier yes___
 - C. Revetment yes___
 - D. Marsh Creation yes___
 - E. Other _____

How many feet of shoreline exist on site? _____

11. The drawings/plats to be submitted with the building permit application must include the following:

- W/A
- A. Show both existing and proposed water dependent facilities on the plat.
 - B. Show the lateral lines and adjacent properties shorelines - must stay 25 feet from each lateral line
(See Section 5-4.06 of the Calvert County Zoning Ordinance)
 - C. Show harbor line if applicable (See Harbor Line map in the office of Planning and Zoning.)

12. A County Building Permit Application must be submitted with the following additional information if proposing a water dependent project which meets the requirements of the State of Maryland Pier and Piling Notification Form.

- W/A
- A. A copy of the completed State of Maryland Pier and Piling Notification Form
 - B. A copy of the approval letter from the State
 - C. A completed County grading permit or grading exemption form if applicable

13. A County Building Permit Application must be submitted with the following additional information if proposing a water dependent project which does not meet requirements in #12 above.

- W/A
- A. Copy of State approval(s)
 - B. Copy of Federal approval letter(s)
 - C. A completed County grading permit or grading exemption form if applicable

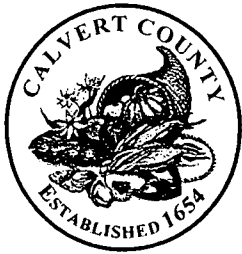
I hereby certify that I have the authority to make this application and the information given is correct.

DATE: 9/15/06

SIGNATURE: _____

(property owner or
authorized agent)

See the Calvert County Zoning Ordinance and the Calvert County Critical Area Program for additional information and requirements.



**CALVERT COUNTY
BOARD OF APPEALS**

150 Main Street
Prince Frederick, Maryland 20678
Phone: (410) 535-2348 • (301) 855-1243
Fax: (410) 414-3092

October 16, 2008

Louis P. Stone, III
P. O. Box 241
Dowell, MD 20629-0241

Subject: Calvert County Board of Appeals Corrected Order for Case No. 06-3382

Dear Mr. Stone:

The subject corrected order was issued October 15, 2008 to correct clerical errors of omission in the original order regarding construction within the Critical Area 100' waterfront buffer.

Please note the effective date of the Order granting the Special Exception to create a banquet hall remains as January 8, 2007. In addition, per Rule 6-101.A.1 of the Rules of Procedure, Calvert County Board of Appeals, correction of a clerical error does not affect the date on which subsequent appeals may be based. The date of the original Order shall be the official date for appeal purposes.

Sincerely,

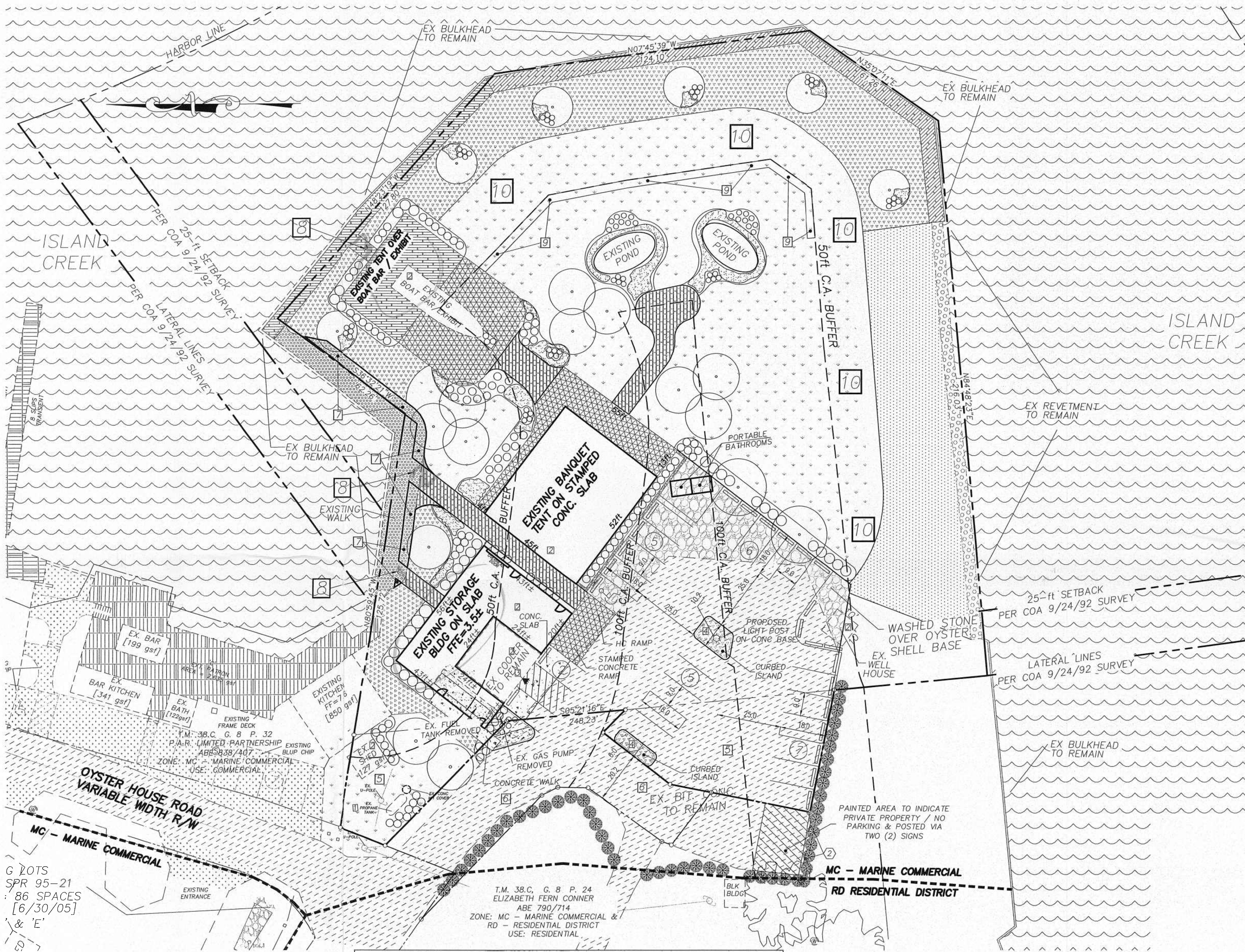
A handwritten signature in cursive script, reading "Pamela P. Helie".

Pamela P. Helie
Clerk to the Board of Appeals

Cc: Dan Kelsh, COA, Inc.
David Humphreys, Planning Commission Administrator

Mailing Address: 175 Main Street, Prince Frederick, Maryland 20678

Maryland Relay for Impaired Hearing or Speech 1-800-735-2258



LIGHTING LEGEND				
SYMBOL	QUANTITY	TYPE	SIZE	SPACING
◀	1	WALL MOUNTED FIXTURE	EXISTING	AS SHOWN
☼	1	POLE MOUNTED FIXTURE	25 FT	AS SHOWN

SIGN LEGEND			
MUTCD STD #	DESCRIPTION OR TEXT ON SIGN	SYMBOL	QTY.
R7-8	HANDICAP "RESERVED PARKING"	♿	1
	PRIVATE PROPERTY - NO PARKING	Ⓜ	2

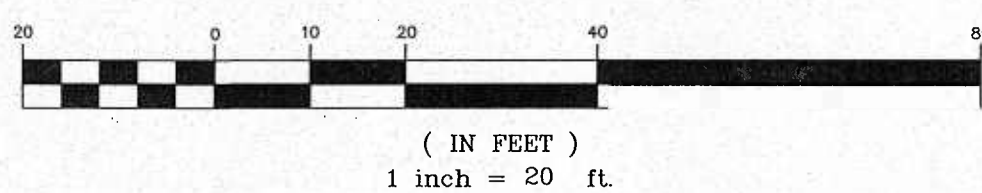
NOTE: ALL SIGNS ARE TO BE INSTALLED ON 4 IN x 4 IN TREATED WOODEN POST AND PER "THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) AND THE CALVERT COUNTY ROAD ORDINANCE AS CURRENTLY AMENDED.

THIS PROPERTY WAS DESIGNATED I.D.A. & S.B.M.A. BY THE CRITICAL AREA COMMISSION AT A HEARING ON 4/7/10. ALL CONDITIONS OF THAT APPROVAL SHALL BE IMPLEMENTED. THE 100-FT BUFFER IS SHOWN FOR REFERENCE ONLY.

FLOOD PLAIN:

THE ENTIRE PROPERTY (TM 36C G.8 P.15) IS WITHIN THE A7 ZONE OF THE FLOOD PLAIN (ELEVATION 6.0). ALL PROPOSED CONSTRUCTION MUST COMPLY WITH THE REQUIREMENTS OF THE CALVERT COUNTY FLOOD PLAIN MANAGEMENT ORDINANCE EXCEPT AS PERMITTED BY THE BOA #08-3559C HEARING ON 04/01/10 AND THE CONDITIONS OF THE CRITICAL AREA COMMISSION HEARING ON 4/7/10 WHEN GROWTH ALLOCATION & SPECIAL BUFFER MANAGEMENT AREA WERE APPROVED.

GRAPHIC SCALE



SITE PLAN NOTES

- 1.) NO ON-SITE CURB MATERIAL IS PROPOSED.
- 2.) HANDICAP PARKING SPACE, RAMP, AND ACCESS TO FACILITIES SHALL BE HARD SMOOTH SURFACE (ASPHALT, CONCRETE, OR OTHER PAVEMENT) ALL IN ACCORDANCE WITH A.D.A. REQUIREMENTS.
- 3.) ALL EXISTING FEATURES ARE TO REMAIN UNLESS NOTED OTHERWISE.
- 4.) ALL EXTERIOR LIGHTING PROPOSED FOR THIS SITE SHALL BE PERMANENTLY INSTALLED AND MOUNTED SO THAT IT WILL NOT ADVERSELY AFFECT NEIGHBORING PROPERTIES AND ROADS. ALL EXTERIOR LIGHTING SHALL BE "DARK SKIES FRIENDLY."
- 5.) NO EXTERIOR STORAGE INCLUDING TRASH OR RECYCLING FACILITIES ARE PROPOSED OR APPROVED AS PART OF THESE PLANS EXCEPT TEMPORARY TRASH CANS TO BE PLACED AROUND FACILITY DURING EVENTS.
- 6.) THE BANQUET TENT IS TO BE A PERMANENT FEATURE OF THIS SITE. THE TENT MATERIAL AND SUPPORTING METAL STRUCTURE MAY BE REMOVED SEASONALLY AND AS NEEDED DURING INCLEMENT WEATHER.

KEYED NOTES

SYMBOL	DESCRIPTION
[1]	PROANE TANK MUST BE ANCHORED IN ACCORDANCE WITH THE CC. FLOOD PLAIN MANAGEMENT ORDINANCE.
[2]	ALL ELECTRIC UTILITIES ON THE BUILDING SIDE OF THE METER SHALL BE AT LEAST TWO (2) FEET ABOVE THE FLOOD PROTECTION ELEVATION (F.P.E.). ALL PLUMBING AND ELECTRICAL INSTALLATIONS I.E. OUTLETS HEAT PUMPS, A/C, WATER HEATER, FURNACES, GENERATORS AND DISTRIBUTION SYSTEMS SHALL BE AT OR ABOVE F.P.E. EXCEPT AS PERMITTED BY THE BOA #08-3559C HEARING ON 04/01/10 AND THE CONDITIONS OF THE CRITICAL AREA COMMISSION HEARING ON 4/7/10 WHEN GROWTH ALLOCATION & SPECIAL BUFFER MANAGEMENT AREA WERE APPROVED.
[3]	EXISTING WALL MOUNTED NON CONFORMING LIGHT FIXTURE SHALL BE MADE TO CONFORM WITH THE APPLICABLE REQUIREMENTS OF THE CALVERT COUNTY ZONING ARTICLE 6-6.01 WHEN: (a) IT IS BROKEN AND ENDANGERING THE PUBLIC AND/OR CAUSING GLARE INTO ONCOMING TRAFFIC, CREATING A SAFETY HAZARD, AS DETERMINED BY THE DIRECTOR OF PLANNING & ZONING; OR (b) IT IS REPLACED OR RELOCATED.
[4]	REMOVE PAVING AND PROVIDE CURB & GUTTER ISLAND FILLED WITH RIVER STONE.
[5]	AREA OBTAINED BY OWNER PER DEED RECORDED IN THE LAND RECORDS AT K.P.S. 3372 @ 276.
[6]	ACCESS EASEMENT OBTAINED BY OWNER PER DEED RECORDED IN THE LAND RECORDS AT K.P.S. 3372 @ 276.
[7]	AREA OF PAVERWALK TO BE REMOVED LEAVING AN 8-FT WIDE WALK. UNDERLYING SOILS TO BE AMENDED TO SUPPORT NATIVE SPECIES PLANTINGS (SEE BUFFER AREA PLANTING PLAN BY LASTING IMPRESSIONS).
[8]	THREE (3) ACCESS POINTS THROUGH BUFFER TO WALKWAY/BOARDWALK.
[9]	LINEAR RAIN GARDEN (LRG) TO BE PROVIDED ALONG 50-FT BUFFER AS SHOWN. LRG DIMENSIONS TO BE 3-FT W x 160-FT L x 0.5-FT D WITH MAXIMUM 3:1 SIDE SLOPES. FIFTY FIVE (55) SHRUBS INCLUDED ON BUFFER AREA PLANTING PLAN (SHT 2.1) TO BE PLANTED IN STAGGERED ROW WITH 3-FT SPACING ALONG LENGTH.
[10]	SEE BUFFER AREA PLANTING AND MANAGEMENT PLAN (SHT 2.1) FOR QUANTITIES, SPECIES AND HANDLING OF MATERIALS TO BE PLANTED WITHIN THE CRITICAL AREA BUFFER.

CRITICAL AREA INFORMATION

DESCRIPTION	EXISTING		PROPOSED	
	ACREAGE	%	ACREAGE	%
TOTAL SITE AREA	1.31	100.0	1.31	100.0
IMPERVIOUS COVERAGE	1.18	90.1	0.69	52.7
FORESTED AREA	0.0	0.0	0.0	0.0
PERVIOUS COVERAGE	0.13	9.9	0.62	47.3
CLEARED AREA			0.0	0.0
DISTURBED AREA			1.11	84.7

LOT COVERAGE LEGEND & INFORMATION

SYMBOL	DESCRIPTION	% IMPERV.	IMPERV. AREA sf
[Pattern]	EX. STONE REVETMENT	100 %	690
[Pattern]	EX. PAVEMENT	100 %	4,892
[Pattern]	EX. BOARDWALK	100 %	58
[Pattern]	EX. BRICK PAVERS	100 %	867
[Pattern]	EX. RIVER STONES	100 %	8,208
[Pattern]	PROP'D GRAVEL	100 %	2,282
[Pattern]	PROP'D BOARDWALK	100 %	3,189
[Pattern]	PROP'D BRICK PAVERS	100 %	1,701
[Pattern]	PROP'D CONCRETE (1)	100 %	5,538
[Pattern]	PROP'D STAMPED CONC.	100 %	2,509
[Pattern]	TOTAL IMPERVIOUS AREA	100 %	29,914
[Pattern]	PROP'D GRASS & PLANTING BEDS (2)	0 %	21,529
[Pattern]	PROP'D SAND	0 %	5,621
[Pattern]	TOTAL PERVIOUS AREA	0 %	27,150

NOTE:

- 1) INCLUDES TENT SLABS, BOAT BAR/EXHIBIT & POND AREAS.
- 2) INCLUDES EX. & PROP'D GRASS AND PLANTING BEDS.

COLLINS, OULF & ASSOCIATES, INC.
Surveyors • Engineers
Land Planners
288 MERRIMAC COURT
PRINCE FREDERICK, MARYLAND 20678
410-535-3101 • 301-855-1599 • FAX 410-535-3103 • EMAIL INFO@COAINC.COM

COA

DEPARTMENT OF MARYLAND
DIVISION OF PLANNING
PLANNING BOARD
DANIEL J. KELSH, MD PE # 17327
4/13/10
DATE

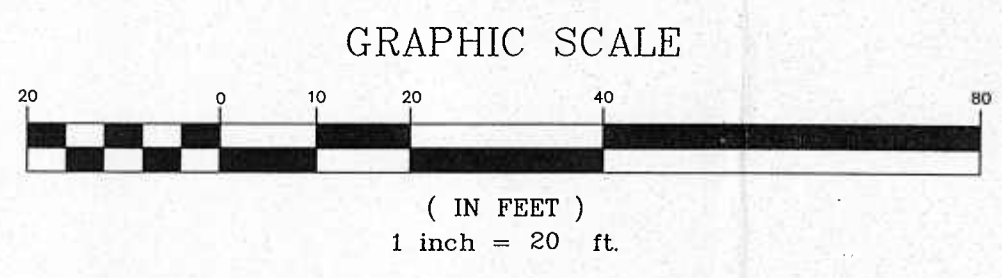
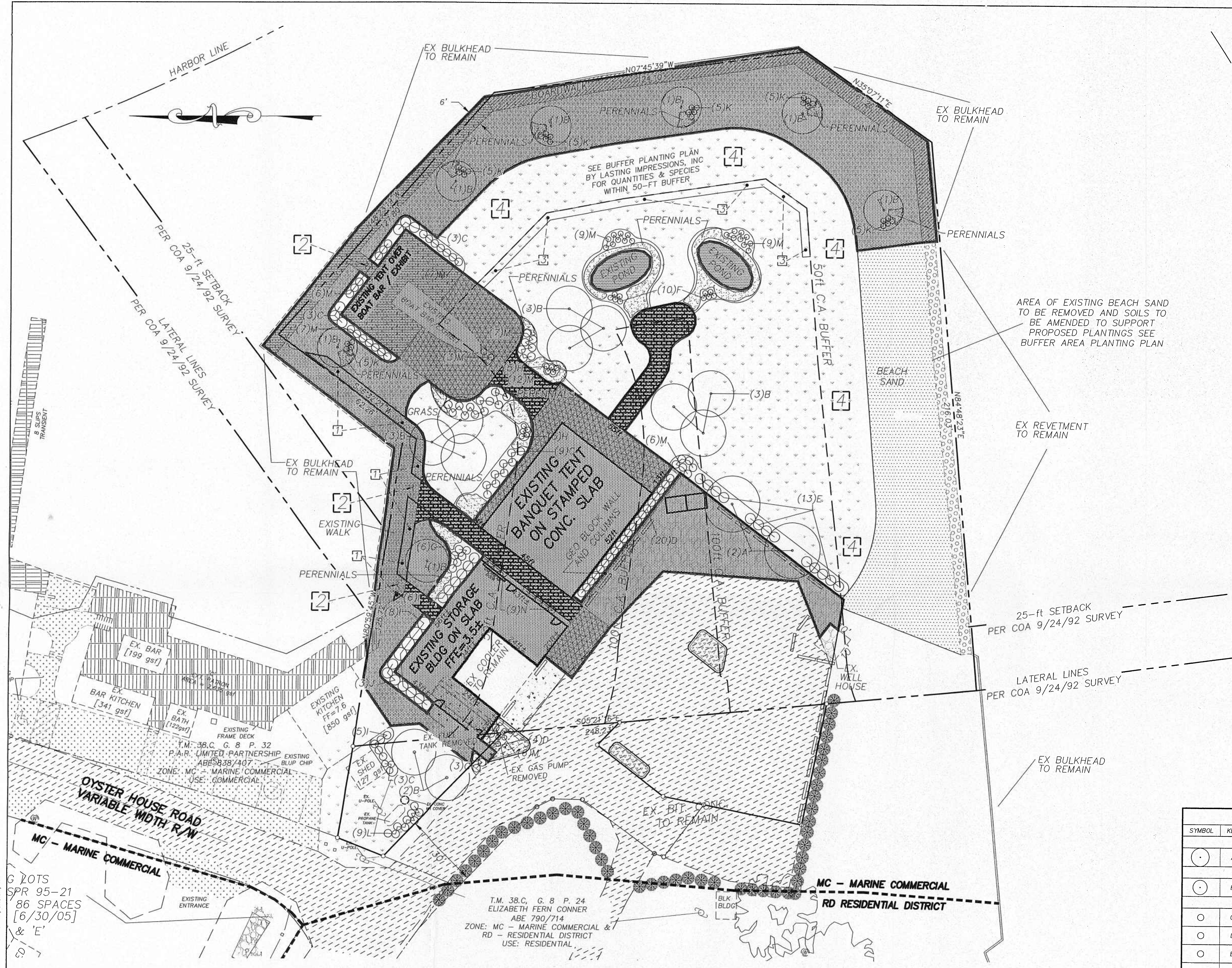
RECEIVED
APR 14 2010
CRITICAL AREA COMMISSION
3946 OYSTER HOUSE ROAD
CALVERT COUNTY, MARYLAND
Chesapeake & Atlantic Coastal Bays

THIS STAMP IN RED COLOR INDICATES ORIGINAL

FILE NO. B - 33 - 20 A

SHEET NO. 2.0

Q:\Projects\97\Dam1-8668 Denton\dwg\Sle-rev1A.dwg, 2/17/2010 4:56:48 PM, dkeish, 1:1
G LOTS
SPR 95-21
86 SPACES
[6/30/05]
& 'E'



KEYED NOTES	
SYMBOL	DESCRIPTION
[1]	AREA OF PAVERWALK TO BE REMOVED LEAVING AN 8'-ft WIDE WALK. UNDERLYING SOILS TO BE AMENDED TO SUPPORT NATIVE SPECIES PLANTINGS (SEE BUFFER AREA PLANTING PLAN BY LASTING IMPRESSIONS).
[2]	THREE (3) ACCESS POINTS THROUGH BUFFER TO WALKWAY/BOARDWALK.
[3]	LINEAR RAIN GARDEN (LRG) TO BE PROVIDED ALONG 50'-ft BUFFER AS SHOWN. LRG DIMENSIONS TO BE 3'-ft W x 160'-ft L x 0.5'-ft D WITH MAXIMUM 3:1 SIDE SLOPES. FIFTY FIVE (55) SHRUBS INCLUDED ON BUFFER AREA PLANTING PLAN TO BE PLANTED IN STAGGERED ROW WITH 3'-ft SPACING ALONG LENGTH.
[4]	SEE BUFFER AREA PLANTING AND MANAGEMENT PLAN FOR QUANTITIES, SPECIES AND HANDLING OF MATERIALS TO BE PLANTED WITHIN THE CRITICAL AREA BUFFER.

CRITICAL AREA INFORMATION				
DESCRIPTION	EXISTING		PROPOSED %	
	ACREAGE	%	ACREAGE	%
TOTAL SITE AREA	1.31	100.0	1.31	100.0
IMPERVIOUS COVERAGE	1.18	90.1	0.69	52.7
FORESTED AREA	0.0	0.0	0.0	0.0
PERVIOUS COVERAGE	0.13	9.9	0.62	47.3
CLEARED AREA			0.0	0.0
DISTURBED AREA			1.11	84.7

LOT COVERAGE LEGEND & INFORMATION			
SYMBOL	DESCRIPTION	% IMPERV.	IMPERV. AREA sf
[Pattern]	EX. STONE REVENMENT	100 %	690
[Pattern]	EX. PAVEMENT	100 %	4,892
[Pattern]	EX. BOARDWALK	100 %	58
[Pattern]	EX. BRICK PAVERS	100 %	867
[Pattern]	EX. RIVER STONES	100 %	8,208
[Pattern]	PROP'D GRAVEL	100 %	2,262
[Pattern]	PROP'D BOARDWALK	100 %	3,189
[Pattern]	PROP'D BRICK PAVERS	100 %	1,701
[Pattern]	PROP'D CONCRETE (1)	100 %	5,538
[Pattern]	PROP'D STAMPED CONC.	100 %	2,509
[Pattern]	TOTAL IMPERVIOUS AREA	100 %	29,914
[Pattern]	PROP'D GRASS & PLANTING BEDS (2)	0 %	21,529
[Pattern]	PROP'D SAND	0 %	5,621
[Pattern]	TOTAL PERVIOUS AREA	0 %	27,150

NOTE:
1) INCLUDES TENT SLABS, BOAT BAR/EXHIBIT & POND AREAS.
2) INCLUDES EX. & PROP'D GRASS AND PLANTING BEDS.

Total Mitigation (T.M.) Calculation:
Area of Improvements (less veg. areas) = 24,008 sf±
Factor x 4
Total Mitigation Area = 96,032 sf±

Fee in Lieu of Plantings Calculation:
T.M. Area = 96,032 sf±
*Mitigation Plantings - 46,460 sf±
F.I.L. Rate x \$0.40 per sf
Total F.I.L. Required = \$19,828.80

Planting Bond Required:
Total Planting Area = 46,460 sf±
Bond Rate x \$0.50 per sf
Total Bond Required = \$23,230

***Mitigation Plantings- See Buffer Planting Plan (BPP)**
400 sf = a) 1 Tree + 3 Shrubs or 8 Shrubs
Per BPP & Landscape Schedule below there are 23 Trees, 792 shrubs & 85 grasses (All Native species) which equates to 46,460-sf.

LANDSCAPE SCHEDULE						
SYMBOL	KEY	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE, ROOT PREPARATION	SPACING
SHADE TREES						
[Symbol]	A	2	Acer Rubrum	Red Maple	2in CAL., B&B	40' OC / AS SHOWN
FLOWERING TREES						
[Symbol]	B	18	Lagerstroemia Indica	Crape Myrtle	1.5in. CAL., B&B	40' OC / AS SHOWN
SHRUBS						
[Symbol]	C	21	Yucca	Yucca	18in - 24in, B&B	3' OC / AS SHOWN
[Symbol]	D	24	Taxus	Yew	18in - 24 in, B&B	3' OC / AS SHOWN
[Symbol]	E	13	Photinia Fraseri	Photinia	18in - 24 in, B&B	3' OC / AS SHOWN
[Symbol]	F	10	Rosa "Knock Out"	Knock Out Rose	18in - 24 in, B&B	3' OC / AS SHOWN
[Symbol]	G	6	Nandina Domestica	Nandina	18in - 24 in, B&B	3' OC / AS SHOWN
[Symbol]	H	10	Spiraea X Vanhouttei	Spiraea	18in - 24 in, B&B	3' OC / AS SHOWN
[Symbol]	I	19	Viburnum	Viburnum	18in - 24 in, B&B	3' OC / AS SHOWN
[Symbol]	J	3	Ilex Aquifolium	Holly	18in - 24 in, B&B	3' OC / AS SHOWN
GRASSES						
[Symbol]	K	30	Calamagrostis	Feather Reed Grass	18in - 24 in, B&B	3' OC / AS SHOWN
[Symbol]	L	9	Miscanthus Sinensis	Silver Grass	18in - 24 in, B&B	3' OC / AS SHOWN
[Symbol]	M	72	Pennisetum Setoecum	Fountain Grass	18in - 24 in, B&B	3' OC / AS SHOWN
PLANTINGS						
[Symbol]	-	SEE PLANS	-	SEE PLANS	SEE PLANS	SEE PLANS

LANDSCAPE PLAN DESIGNED BY LASTING IMPRESSIONS, INC. PROVIDED ON 7/25/08.

COLLISON, OLIFF & ASSOCIATES, INC.
Surveyors • Engineers
Land Planners
288 MERRIMAC COURT
PRINCE FREDERICK, MARYLAND 20678
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COA

STATE OF MARYLAND
DEPARTMENT OF THE GENERAL CLERK
PROFESSIONAL ENGINEER
DANIEL J. KEISH, MD PE # 17827
2/17/10
DATE

PROPOSED MITIGATION PLAN
STONEY'S BANQUET FACILITY
BROOME'S ISLAND
3946 OYSTER HOUSE ROAD
LOCATED IN FIRST DISTRICT
CALVERT COUNTY, MARYLAND
FOR: LOUIS P. STONE III

RECEIVED
APR 14 2010
APPROVED
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Program

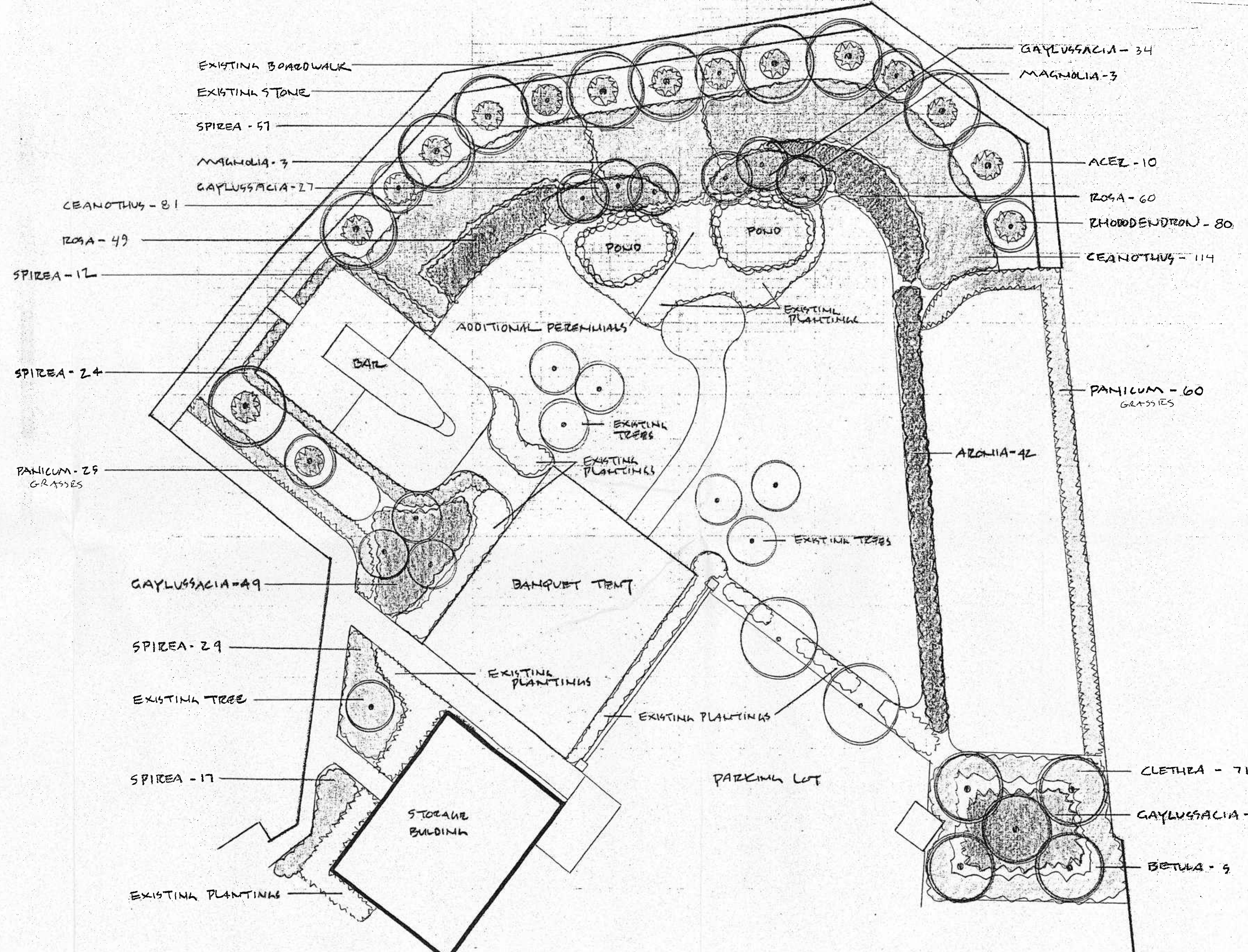
THIS STAMP IN RED COLOR INDICATES ORIGINAL

SHEET NO. 1

FILE NO. FILE

STONE'S SEAFOOD HOUSE
3932 OYSTER HOUSE ROAD
BROOMES ISLAND, MARYLAND

BUFFER AREA PLANTING PLAN
SCALE: 1" = 20'0" JAN. 2010



PLANT LIST

TREES		
10	ACER RUBRUM	2-2.5"
5	BETULA NIGRA	10-12'
6	MAGNOLIA VIRGINIANA	5-6'
21 TOTAL		
SHRUBS		
42	ARONIA MELOANOCARPA	2-3'
195	CEANOTHUS AMERICANUS	2-3'
71	CLETHRA ALNIFOLIA	2-3'
156	GAYLUSSACIA BACCATA	1-2'
80	RHODODENDRON ATLANT.	2-3'
109	ROSA CAROLINA	2-3'
139	SPIREA TOMENTOSA	2-3'
85	PANICUM VIRGATUM (GRASSES)	2-3'
677 TOTAL 792 SHRUBS 85 GRASSES		

CRITICAL AREA PLANTING MAINTENANCE AGREEMENT

All trees and shrubs planted by the contractor shall be maintained as follows:

1. The project area should be kept healthy, neat and orderly. The area should be kept free of trash and debris. All reasonable precautions shall be taken to avoid damage to existing plants, structures and private property.
2. Remove all tags, labels, strings, and wire from the plant material unless otherwise directed.
3. Apply soil amendments (e.g. lime fertilizer, compost) at rates necessary to insure stand establishment.
4. Final clean up shall be the responsibility of the contractor and shall consist of removing all trash and materials incidental to the project. Trash and material shall be disposed of in an appropriate manner off-site.
5. Regularly water plants every few days initially and then once a week depending on soil conditions and rainfall. Weekly to monthly watering should continue as necessary. Trees need 1 inch of water per week during the growing season when there is no rainfall. It is the contractor's responsibility to supply water if there is none available on the site. Any associated costs shall be the responsibility of the contractor.
6. Periodic inspection shall be made by the contractor for any evidence of disease or damage. Pests should be managed using integrated pest management (IPM) principles.
7. The Planning & Zoning Department (P & Z) shall be permitted to enter the property to make other periodic inspections as deemed necessary.
8. The contractor shall maintain a 2 year maintenance agreement from the time of initial inspection on all plants. A minimum of 100% of the total number of plants is required to survive at the end of the maintenance period.
9. Any plant material that is 25% dead or more shall be considered dead and must be replaced at no charge. A tree will be considered dead when the main leader has died back, or 25% of the crown is dead.
10. The periodic care and replacement shall begin after the initial planting bond inspection and approval of the installation of all the plants and continue for 2 years. Planning & Zoning inspections shall be made within 30 days of written notification from the contractor.
11. Plant replacement shall be performed in accordance with the contract specification.
12. The planting bond shall be released if, after the maintenance period, the survival rate is satisfactory.

As part of the maintenance agreement, invasive species will be controlled as follows:

1. Monitor twice annually for invasive species of plants.
2. No clearing of vegetation shall be permitted without Planning & Zoning authorization.
3. Treat, in place, all vine growth. Even if the vines are indigenous, they can put stress on existing trees and shrubs.
4. Treat, in place, all invasive plant species using an accepted systemic herbicide. Invasive species to be treated shall be agreed upon and marked in the field. Herbicide shall only be applied by an applicator licensed through the MD Department of Agriculture.
5. Leave dying trees, this will invite microorganisms that will help encourage and maintain healthy plant growth.
6. Leave woody material and other organics such as leaves in place for the nutrient regeneration and moisture.
7. No vehicles or heavy equipment shall be permitted in planted areas.
8. No storage of anything except plant material shall be permitted in reforestation areas.

